THE RECOMMENDATIONS OF HABANA CONCERNING INTERNATIONAL ORGANIZATION

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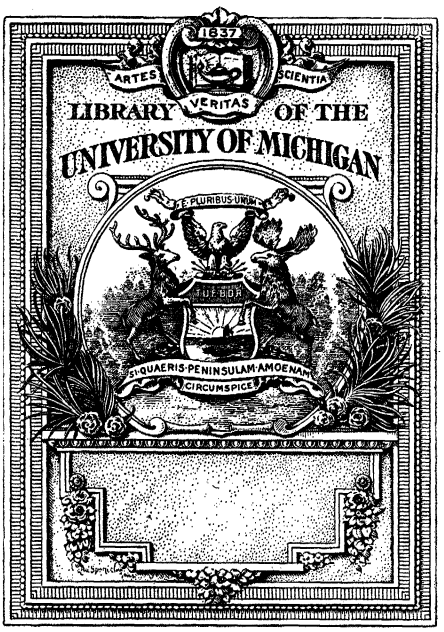

Carnegie Endowment for International Peace
DIVISION OF INTERNATIONAL LAW

THE RECOMMENDATIONS OF HABANA CONCERNING INTERNATIONAL ORGANIZATION

ADOPTED BY THE

AMERICAN INSTITUTE OF INTERNATIONAL LAW
AT HABANA, JANUARY 23, 1917

ADDRESS AND COMMENTARY

BY

JAMES BROWN SCOTT
President of the American Institute of International Law

The first and greatest interest of the public is always justice. All want equal conditions for all and justice is this equality. The citizen only desires law and the observance of law. Everybody among us knows that if there are exceptions they will not be in his favor. Thus, all fear exceptions and he who fears exceptions loves the law.

JEAN JACQUES ROUSSEAU.

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FOREWORD

The American Institute of International Law held its second annual meeting at Habana, January 22–January 27, 1917, upon the invitation of the Cuban Government and under the auspices of the Cuban Society of International Law. It will hold its third session in the city of Montevideo upon the invitation of the Government of Uruguay, and under the auspices of the Uruguayan Society of International Law, in the course of 1918, at a date to be fixed after conference with the Uruguayan Government and the Uruguayan Society of International Law.

The Institute adopted sundry recommendations upon international organization which it decided should bear the name of "Recommendations of Habana Concerning International Organization"; and in addition, referred for an expression of opinion various projects to the national societies of international law, of which one is established in the capital of each American republic. The text of the projects and of the action taken in each case is contained in the Final Act of the Institute.

The address on the Platt Amendment and Recommendations on International Organization was delivered in summary form by the undersigned as President of the Institute, at the opening session of the Institute on the evening of January 22, 1917, at which the President of the Cuban Republic presided in person. The recommendations of Habana concerning international organization were unanimously adopted by the Institute on January 23, 1917, and they are printed as adopted, with the addition of a commentary for which the undersigned is responsible.

The American Institute of International Law, in its Declaration of the Rights and Duties of Nations, adopted at its first

session, in the city of Washington, on January 6, 1916, endeavored to lay a firm foundation upon which the temple of justice may be raised and may securely rest, and in the recommendations of Habana concerning international organization, adopted by the American Institute of International Law at its second session in the city of Habana on January 23, 1917, it attempted to state the goal of its endeavor and to outline the minimum of international organization consistent with the administration of international justice.

JAMES BROWN SCOTT.

WASHINGTON, D. C.,
April 21, 1917.

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THE PLATT AMENDMENT—RECOMMENDATIONS ON INTERNATIONAL ORGANIZATION

MR. PRESIDENT AND GENTLEMEN:

It is almost nineteen years ago since I started for Cuba, as I then thought, in response to a call of President McKinley for volunteers, but the regiment in which I had the honor to serve as a private was attached to the Philippine expeditionary forces, and it is only today that I have arrived; and very happy I am to find myself at last in the beautiful city of Habana, in the beautiful island of Cuba, and to see with my own eyes the capital of Cuba Libre.

You will believe me when I assure you that this is no ordinary event for me, and you will pardon me if I enter somewhat into the relations between Cuba and the United States, because I would like to use them "to point a moral and adorn a tale." When, in 1898, President McKinley informed Spain that the situation in Cuba was intolerable and that it should not be continued, and when Congress directed the land and naval forces of the United States to be used in order to secure the independence of Cuba, it was understood, and it was so stated, that the war—for war it was to be—should be one of independence, and that it should not be one of conquest. By the treaty of peace, signed December 10, 1898, between Spain and the United States, it was agreed that Cuba should be occupied by forces of the United States, but the United States intended then and always that Cuba, after a period of reconstruction, should be handed over to its people.

Let me quote a few sentences from the documents in order that we may see, from official sources, the facts in the case.

In his message to the Congress of April 11, 1898, President McKinley recommended that the United States should inter-

vene in Cuba "in the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there;"[1] and on the 20th the Congress adopted the following joint resolution, providing:

> First. That the people of the Island of Cuba are, and of right ought to be, free and independent.
>
> Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.
>
> Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, . . . to such extent as may be necessary to carry these resolutions into effect.
>
> Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people.[2]

On December 10, 1898, the treaty of peace between the countries unfortunately at war was concluded at Paris, and of this treaty two articles, the 1st and the 16th, are material to the present question. Thus, the first reads:

> Spain relinquishes all claim of sovereignty over and title to Cuba.

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[1] *Foreign Relations of the United States,* 1898, p. 757.

[2] *United States Statutes at Large,* vol. 30, pp. 738–9.

> And as the Island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

And the 16th Article is thus worded:

> It is understood that any obligations assumed in this treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof; but it will upon the termination of such occupancy, advise any Government established in the Island to assume the same obligations.[1]

The intention of the United States was, as I understand it, that Cuba should be free, that it should not fall a prey to a foreign enemy, that a government should be established which would deal justly with foreign powers across the seas, so that they would have no pretext for intervention; and that this government, republican of course, representing the people of Cuba, their hopes, their desires, their aspirations, should husband the resources, contribute to the prosperity of the island, and administer to the happiness of the people by whom and for whose benefit it was to be created.

An illustrious American statesman and benefactor of Cuba, and a friend of Latin America, appreciating what the relations between the two countries should be, drew up a series of resolutions defining those relations and calculated to safeguard them when defined. These resolutions are commonly known as the Platt Amendment; but it was the mind of Elihu Root which conceived them, it was his skill which drafted them, and it was his hand that executed them. The substance of the reso-

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[1] *United States Statutes at Large,* vol. 30, pp. 1755, 1761.

lutions he regarded as essential to the best interests of the two countries, and, that there might be neither doubt nor misconception, he wished them to be made the law of each country and to be incorporated in a treaty between the two republics.

As the matter is one of historic interest, as well as of fundamental importance, I shall ask your indulgence while I attempt to trace the origin of the Amendment which states and defines the relations between Cuba and the United States and which is capable of even a larger application.

As the time drew near for the United States to withdraw from Cuba, and to turn the island over to its people, Mr. Root, as Secretary of War, and as such charged with the handling of Cuban affairs, considered the conditions in instructions of February 9, 1901, to Major General Leonard Wood, then Military Governor of the island, and stated the relations which should exist between Cuba and the United States in the interest of both countries. In speaking of the government to be established, he said:

> It is plain that the government to which we were thus to transfer our temporary obligations should be a government based upon the peaceful suffrages of the people of Cuba, representing the entire people and holding their power from the people, and subject to the limitations and safeguards which the experience of constitutional government has shown to be necessary to the preservation of individual rights. This is plain as a duty to the people of Cuba under the resolution of April 20, 1898, and it is plain as an obligation of good faith under the Treaty of Paris. Such a government we have been persistently and with all practicable speed building up in Cuba, and we hope to see it established and assume control under the provisions which shall be adopted by the present convention.[1]

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[1] *The Military and Colonial Policy of the United States, addresses and reports,* by Elihu Root, p. 209. Harvard University Press, 1916.

Mr. Root then referred to the attitude of the United States toward Cuba when the island was under the domination of Spain, and the unwillingness to allow any foreign power other than Spain to hold or to acquire possession of Cuba. "The United States has," he said, "and will always have, the most vital interest in the preservation of the independence which she has secured for Cuba, and in preserving the people of that island from domination and control of any foreign power whatever." Mr. Root next entered upon an examination of the conditions upon which Cuban independence might be maintained, reaching the conclusion that the preservation of the independence of Cuba "must depend upon her strict performance of international obligations, upon her giving due protection to the lives and property of the citizens of all other countries within her borders, and upon her never contracting any public debt which in the hands of the citizens of foreign powers shall constitute an obligation she is unable to meet." The rôle which the United States should assume in the preservation of this independence Mr. Root thus stated:

> We are placed in a position where, for our own protection, we have, by reason of expelling Spain from Cuba, become the guarantors of Cuban independence and the guarantors of a stable and orderly government protecting life and property in that island. Fortunately the condition which we deem essential for our own interests is the condition for which Cuba has been struggling, and which the duty we have assumed toward Cuba on Cuban grounds and for Cuban interests requires. It would be a most lame and impotent conclusion if, after all the expenditure of blood and treasure by the people of the United States for the freedom of Cuba and by the people of Cuba for the same object, we should, through the constitution of the new government, by inadvertence or otherwise, be placed in a worse condition in regard to our own vital interests

than we were while Spain was in possession, and the people of Cuba should be deprived of that protection and aid from the United States which is necessary to the maintenance of their independence.[1]

After a further consideration of the question, Mr. Root thus summed up his observations upon this subject:

> The people of Cuba should desire to have incorporated in her fundamental law provisions in substance as follow:
>
> 1. That no government organized under the constitution shall be deemed to have authority to enter into any treaty or engagement with any foreign power which may tend to impair or interfere with the independence of Cuba, or to confer upon such foreign power any special right or privilege without the consent of the United States.
>
> 2. That no government organized under the constitution shall have authority to assume or contract any public debt in excess of the capacity of the ordinary revenues of the island, after defraying the current expenses of government, to pay the interest.
>
> 3. That upon the transfer of the control of Cuba to the government established under the new constitution Cuba consents that the United States reserve and retain the right of intervention for the preservation of Cuban independence and the maintenance of a stable government, adequately protecting life, property, and individual liberty, and discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States and now assumed and undertaken by the Government of Cuba.
>
> 4. That all the acts of the military government, and all rights acquired thereunder, shall be valid and shall be maintained and protected.
>
> 5. That to facilitate the United States in the performance of such duties as may devolve upon her

[1] *Ibid.*, p. 210.

> under the foregoing provisions and for her own defense, the United States may acquire and hold the title to land for naval stations, and maintain the same at certain specified points.[1]

On the 19th of February, 1901, General Wood acknowledged the receipt of Secretary Root's instructions in a letter which was only made public last month, and in which he informed Mr. Root that he had laid the five provisions before the Constitutional Convention and in which he suggested to Mr. Root the addition of an article concerning sanitation. On the first point, General Wood said:

> On receipt of the instructions by cable I immediately assembled the Committee on Relations to Exist between Cuba and the United States and made known to them the five articles or provisions which, in the opinion of the Executive branch of the Government, represent the wishes of the United States in all that pertains to the proposed relations between the Government of the United States and the people of Cuba.
>
> I was particularly careful [he continues] to impress upon them that Congress might in its wisdom insist upon different conditions or relations, but that the proposition submitted embodied those which in the opinion of the Executive branch of the Government should exist and that they were the only ones which they could at present consider.[2]

As to the question of sanitation, General Wood said:

> There is another phase of this Cuban situation which seems to be of vital importance; that is the sanitary conditions which will probably exist in Havana and other large cities under a Cuban government. As I understand

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[1] *Ibid.*, p. 211.

[2] *Ibid.*, p. 186.

it the purpose of the war was not only to assist the Cubans, but, in a general sense, to abate a nuisance. It is probable that if we leave the Island of Cuba without a definite agreement with the government to come in reference to the maintenance of good sanitary conditions, that we shall soon find Havana and all other large cities in practically the same condition of sanitation as during the Spanish War and a menace to our Southern seaports and the consequent interference with commerce will continue. As a rule, the people of the island are immune to yellow fever, and, consequently, take little interest in the elaborate sanitary precautions which have been instituted under the American rule and which have resulted in reducing the death rate in Havana alone, from 45 per 1000 as an average death rate in times of peace to 24 and a fraction.[1]

To General Wood's letter of the 19th, containing the suggestion in the matter of sanitation, Mr. Root replied in a letter of February 23d, from which I quote a paragraph outlining the action which, in his opinion, the Government should take in the matter of sanitation and which, as a matter of fact, it took in regard to the entire Cuban situation:

> Your letters of February 19th have been received. The official one, acknowledging my communication of February 9th, and treating of the sanitary question, has been read to the President and also to Senators Platt and Spooner. Any sanitary control involves so great an infringement of the independence and internal government of Cuba, it is difficult to say how that can be dealt with consistently with the Teller Resolution of April 20, 1898; that is to say, how it can be dealt with except by Congress. It will not be lost sight of in the treatment of the subject here.

Senator Platt, to whom Mr. Root referred in this very important letter, was Orville H. Platt, United States Senator from

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[1] *Ibid.*, p. 187.

Connecticut, and Chairman of the Senate Committee on Cuban Relations; and Senator Spooner, to whom Mr. Root likewise referred, was John C. Spooner, Senator from Wisconsin, and an influential member of the same Committee. President McKinley approved Mr. Root's original instructions and the additional article suggested by General Wood. Senator Platt as Chairman of the Committee on Cuban Relations was requested by the President and Mr. Root to take charge of the proposed legislation and to introduce the instructions and article agreed upon as an amendment to the Army Appropriation Bill. Senator Platt complied with the request, introducing them with slight modifications and additions as an amendment to the bill. The amendment was adopted by the Congress, and it thus became statutory law of the United States, March 2, 1901, upon the President's approval of the bill as thus amended.

Let me read the so-called Platt Amendment:

> That in fulfillment of the declaration contained in the joint resolution approved April twentieth, eighteen hundred and ninety-eight, entitled "For the recognition of the independence of the people of Cuba, demanding that the government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the President is hereby authorized to "leave the government and control of the island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:
>
> I. That the government of Cuba shall never enter into any treaty or other compact with any foreign power or

powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

II. That said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of government, shall be inadequate.

III. That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

IV. That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

V. That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein.

VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

VII. That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba

will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States.

VIII. That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.[1]

The relation between Mr. Root's instructions of February 9, 1901, to General Wood, and the so-called Platt Amendment, and the respective shares of Mr. Root, Senator Platt and General Wood in its authorship, are stated by Mr. Root himself in the following passage from a letter which he wrote me under date of October 24, 1916:

> You will perceive that, with trifling changes of phraseology, Article 1 of the Platt Amendment was Article 1 of my instructions; Article 2 was Article 2 of the instructions; Article 3 was Article 3 of the instructions; Article 4 was Article 4 of the instructions; Article 5 was the sanitation provision suggested by General Wood in his letter to me of February 19; and Article 7 was Article 5 of the instructions. Article 6 of the Amendment about the Isle of Pines and Article 8 about further assurance by treaty were inserted in the committee.

On June 12, 1901, the Constitutional Convention of Cuba, then in session, adopted the text of the Platt Amendment as an integral part of the Constitution of the Republic.[2]

The so-called Platt Amendment is therefore a statute of the United States and a provision of the Cuban Constitution.

Finally, in order that the law common to the two countries should be binding upon both in their mutual intercourse and relations, they form the sole subject-matter of the special

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[1] *United States Statutes at Large,* vol. 31, pp. 897–8.

[2] José Ignacio Rodriguez: *American Constitutions,* vol. II, p. 146. Washington, Government Printing Office, 1907.

treaty of May 22, 1903, between the two countries, in which they are embodied in their entirety.[1]

The so-called Platt amendment, therefore, is a statutory, constitutional and diplomatic right.

It is not my purpose to comment upon these articles, other than to explain the sense in which the United States understood the third article, for Mr. Root wished to make it clear that intervention under the third article was to be in the interest of Cuba, not, as is often the case, solely in the interest of the intervening power, and he wanted it to be understood that the right of intervention should only be exercised upon specific, stated grounds, known and approved in advance by the two countries, before the articles should be made a part of the Cuban Constitution. Therefore, Mr. Root, as Secretary of War, placed the following gloss, or interpretation, upon the third article in the following telegram of April 3, 1901, and had it laid by General Wood before the Cuban Constitutional Convention, so that its members in voting the third article should accept it in the sense in which the article was intended to be understood:

> You are authorized to state officially that in the view of the President the intervention described in the third clause of the Platt Amendment is not synonymous with intermeddling or interference with the affairs of the Cuban Government, but the formal action of the Government of the United States, based upon just and substantial grounds, for the preservation of Cuban independence, and the maintenance of a government adequate for the protection of life, property, and individual liberty, and adequate for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States.[2]

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[1] *United States Statutes at Large,* vol. 33, p. 2248.

[2] *Annual Report of the Secretary of War for the year 1901,* p. 48; *The Military and Colonial Policy of the United States,* by Elihu Root: Cambridge, Harvard Press, 1916, p. 214.

May I dwell for a moment upon the Platt Amendment and upon the official interpretation of it given by its author, Mr. Root, when Secretary of War and representing the United States. The Platt Amendment gives the United States a right to intervene in Cuba for the protection of the independence, not for the destruction of the independence, of Cuba, thus creating a legal right as distinguished from a political pretension. The Amendment enumerates the conditions in which and because of which this right of intervention may be exercised. But in order that there might be no doubt as to the meaning to be attached to the right of intervention and its exercise, Mr. Root, as Secretary of War and as representing the United States, interpreted the third article of the Platt Amendment, and this interpretation was by his direction laid before the Cuban Constitutional Convention, so that, in adopting the Platt Amendment, it should be adopted in the same sense by both countries; that is to say, the sense which Mr. Root attached to it in his telegram to General Wood, then Military Governor, and by him laid before the Constitutional Convention, which adopted the amendment and annexed it to the Constitution. The Platt Amendment creates the right; Mr. Root's interpretation defines the right and limits its scope, and as both countries must have understood the right and its exercise as defined and limited by Secretary Root, speaking for the United States, it necessarily follows that, without violating its good faith, neither country can be forced to accept another and a different interpretation of this right. As I conceive it, the Platt Amendment not only guarantees the independence of Cuba, but it also renders its guarantee effective. The United States deemed it wise, indeed necessary, to remove from foreign countries all pretexts for intervention in the domestic concerns of Cuba. In obtaining the right from and in behalf of Cuba, the United States expressly defined the right, limited its scope, and stated the conditions of its exercise.

On the twentieth of May, 1902, the American flag was lowered and the American troops withdrew from a sovereign, free and independent Cuba. In 1906, the United States felt it necessary to avail itself of the statutory, constitutional and treaty right to intervene in Cuba for the purposes set forth in the third clause of the so-called Platt Amendment and in accordance with Mr. Root's gloss upon it. On March 31, 1909, the forces of the United States again withdrew from the island, leaving Cuba for the second time to its newly elected and duly constituted authorities. The United States pledged its good faith that Cuba should be free and that when the purposes of the first occupation were accomplished the island should be turned over to its people and the American troops withdrawn, and the United States kept the given word. Cuba and the United States agreed that, under certain contingencies the United States might intervene in Cuba, and each has lived up to the obligation, with the result that the relations of the two countries are friendly, confidential and without a trace of suspicion as to the motives of either.

The two nations met upon a plane of equality, arranged their future relations upon just terms, and each has observed the spirit as well as the letter of its obligation. When nations meet upon the plane of equality and arrange their relations justly, that is to say, according to the principles of justice, and when they observe the spirit as well as the letter of their obligations, they dwell in peace and harmony. When, however, they do not meet upon the plane of equality, and the sword of Brennus is thrown into the scale, and when they do not arrange their relations justly, that is to say, in accordance with the principles of justice, but in accordance with the desire of the strong under threat of force, they can not expect to live in peace and harmony, and, if they did, all history would give them the lie.

Standing here as I do before you, speaking of the relations of our two countries, I do not need to hang my head, or to utter words of apology. I regret nothing except that I did not arrive in your beautiful country nineteen years ago.

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I have ventured to refer to the relations between Cuba and the United States because I wish to take a concrete example, to show that, if nations meet upon terms of equality and base their relations upon principles of justice, and if in good faith they keep the pledged word, we may expect peace; but that if they do not do so, out of a mistaken regard to their own interests, anarchy and destruction prevail. As Mr. Root said, on May 11, 1908, on the laying of the cornerstone of the International Bureau of American Republics:

> There are no international controversies so serious that they can not be settled peaceably if both parties really desire peaceable settlement, while there are few causes of dispute so trifling that they can not be made the occasion of war if either party really desires war. The matters in dispute between nations are nothing; the spirit which deals with them is everything.[1]

Feeling keenly as I do upon these matters, I desire to offer some observations upon the methods whereby justice may enter into the practice of nations; for, if the future is to be different from the past (and who does not hope and pray that it will be?) we must think more of justice and the ways of peace and less of force and the ways of war.

I consider three things indispensable in any consideration of this subject, and, without an agreement upon them, it is in

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[1] *American Journal of International Law*, vol. 2, p. 624.

my opinion a waste of time to discuss international questions and to plan for a happier future. The first is that we regard all nations as equal. The second is that the relations of nations be based upon principles of justice; and the third, that the promises of nations, whether they be embodied in formal documents, such as treaties and conventions, or preserved in informal agreements, be scrupulously kept.

Let me touch briefly on each of these points and illustrate by concrete examples the sense in which I would have them understood. First, as to equality. We can not say, and if we do we can not expect to be believed, that nations are equal in all respects, for we know that they are not. Some are larger in territorial extent and are thickly peopled. Some, again, are rich in their natural and material resources; whereas others, lacking territorial and material resources, are rich in the things of the spirit. To confine ourselves to the past, lest we offend the present, Rome possessed greater territory, a more numerous population and greater material resources and enjoyed, because of these, greater political influence than Athens; the Greek conquered the Roman intellectually, just as the Roman conquered the Greek politically, and the Greek spirit which conquered Rome today dominates the modern world. The influence of each was and is different —and how different!

If, therefore, thinking of these things, I should ask you to accept equality as to them, you would justly refuse to be convinced. But I do not speak of physical, mental or moral equality. I have in mind equality before the law, and, in this sense, I believe and therefore I state that nations have equal duties and equal rights in and under the law. Indeed, I am unable to conceive of a system of justice which does not recognize legal equality, and I can not understand how relations not founded upon equality before and under and in the law can be permanent, and it is the permanent things we wish and

must have. The truth that inequality finds no place in justice was never better stated than by a great and high-minded, generous and yet just French statesman at the First Hague Conference. In speaking of the supposed inequality of the powers, Léon Bourgeois said, for it is to him that I refer:

> Gentlemen, what is now the rule among individual men will hereafter obtain among nations. Such international institutions as these will be the protection of the weak against the powerful. In the conflicts of brute force, where fighters of flesh and with steel are in line, we may speak of great Powers and small, of weak and of mighty. When swords are thrown in the balance, one side may easily outweigh the other. But in the weighing of rights and ideas disparity ceases, and the rights of the smallest and the weakest Powers count as much in the scales as those of the mightiest.
>
> This conviction has guided our work, and throughout its pursuit our constant thought has been for the weak. May they at least understand our idea, and justify our hope, by joining in the effort to bring the future of Humanity under the majesty of the Law.[1]

In the presence of this burst of eloquence, one might well hesitate to continue the subject, and yet I may not dismiss it, as it is so relevant to my argument. I would like to say that it is only from the smaller states that we can hope justice to enter into the relations of nations, to permeate the nations and to prevail in their practice, because the larger countries have the sword with which to enforce their views, however unjust they may be, whereas the weaker nations, which are indeed the more numerous, have only justice for a defense and a shield.

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[1] *Conférence internationale de la paix, La Haye,* 18 mai–29 juillet 1899. Nouvelle edition. La Haye, 1907, pt. i, p. 97.

We do not need to go beyond the confines of the United States to seek an illustration of the arrogance of the larger states and of their belief that they are entitled to greater rights because of their bigness. On July 4, 1776, the English-speaking colonies of North America, with the exception of Canada and Newfoundland, proclaimed their independence of Great Britain, and, in order to obtain it, they acted in unison. The states thus proclaimed created a confederacy and in the Articles of Confederation, as the instrument of government is called, they declared themselves to be sovereign, free and independent, and at the same time they reserved to themselves every right not specifically delegated by the Articles to the United States in Congress assembled. The union under the Articles of Confederation proving unsatisfactory, twelve of the thirteen States met in conference by their delegates in the Philadelphia Convention of 1787, and, as the result of their deliberations, drafted the present Constitution of the United States, making of the Confederacy "a more perfect union," safeguarding the equality of the States composing it and investing the United States, as the agency of the States as a whole, with certain powers in the interest and for the well-being of the States themselves, creating two fields, in one of which the United States are sovereign to the extent of the powers enumerated and granted directly or indirectly in the Constitution, and the other field, in which the States are sovereign in the powers which they did not directly or indirectly grant to the United States, or of which they did not renounce the exercise. There was the contest between the great and the small States which always takes place in international conferences, where large and small States are represented, for it is apparently in the nature of power to wish to dominate. The larger States meeting in conference at Philadelphia were no exception, and, in order that I may,

without giving offense to foreign nations, illustrate the perpetual struggle to which the smaller States are put to preserve themselves from the aggression of the larger States, I beg to quote three instances from the debates of the Philadelphia Convention as reported by James Madison, affectionately regarded as the Father of the Constitution and later a President of the United States, whose more perfect union he helped to found.

The first instance happened before the opening of the Convention, and is thus described by Mr. Madison in his invaluable notes of the proceedings:

> Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Governeur Morris and favored by Robert Morris and others from Pennsylvania, that the large States should unite in firmly refusing to the small States an equal vote, as unreasonable, and as enabling the small States to negative every good system of Government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large and small States, and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective Government, than on taking the field of discussion to disarm themselves of the right and thereby throw themselves on the mercy of the larger States, discountenanced and stifled the project.[1]

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[1] *The Journal of the Debates in the Convention which framed the Constitution of the United States, May–September, 1787, as recorded by James Madison,* edited by Gaillard Hunt (New York, 1908), vol. I, p. 6; *The Records of the Federal Convention of 1787,* edited by Max Farrand (New Haven, 1911), vol. I, pp. 10–11.

Therefore, the States, large and small, were given an equality of voice in the rules for the conduct of business. The delegates of the larger States, however, acting apparently upon Madison's advice, endeavored during the course of the session to persuade or to force the small States to yield to the larger a greater influence in the more perfect union than that which was to be possessed by the smaller States, with the result that the Convention well-nigh broke up within the first month of its meeting.

For this second instance, I quote again the accurate Madison, who thus recounts a passage at arms in which John Dickinson, representing the small State of Delaware, criticized and rebuked James Madison, representing the large State of Virginia:

> You see the consequence of pushing things too far. Some of the members from the small States wish for two branches in the General Legislature, and are friends to a good National Government; but we would sooner submit to foreign power, than submit to be deprived of an equality of suffrage in both branches of the legislature, and thereby be thrown under the domination of the large States.[1]

The result was a compromise, by which the large and the small States, respectively, renounced some of their pretensions, without, however, affecting the question of equality.

The third incident happened after the Constitution had been drafted and but two days before the adjournment of the Convention. The chief actors were Gouverneur Morris, who had proposed that the small States be shown their place at the very beginning, and James Madison, who felt that they

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[1] Hunt's edition of Madison's *Journal of the Debates in the Convention,* vol. I, pp. 138–139; Farrand's *Records of the Federal Convention,* vol. I, p. 242.

could be forced to submit to their betters during the course of the Convention. The matter under consideration was the manner of amending the Constitution, and the incident shows why it is that the Constitution can not be modified in such a way as to affect the equality of the States in the Senate, in which each State is represented as such and in which each has two votes. I now quote the third incident, without further comment, from Madison's notes:

> Mr. Govr. Morris moved to annex a further proviso—"that no State, without its consent shall be deprived of its equal suffrage in the Senate."
>
> This motion being dictated by the circulating murmurs of the small States was agreed to without debate, no one opposing it, or on the question, saying no.[1]

* * *

I accept and I beg you to accept the magnificent passage of Rousseau, which I have ventured to place upon the publications of the Institute, in which the citizen of the little Republic of Geneva thus speaks of justice and the equal appeal which it makes to all as the measure of their rights and therefore of their duties:

> The first and greatest interest of the public is always justice. All want equal conditions for all and justice is this equality. The citizen only desires law and the observance of law. Everybody among us knows that if there are exceptions they will not be in his favor. Thus, all fear exceptions and he who fears exceptions loves the law.

It is not necessary, at this time and in this place, to dwell upon the need of a rule of law based upon justice to determine

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[1] Hunt's edition of Madison's *Journal of the Debates in the Convention,* vol. 2, p. 386; Farrand's *Records of the Federal Convention,* vol. 2, p. 631.

the relations of nations and to guide their conduct, because the great war of 1914 is still raging and convinces the most plebeian, bourgeois and dull-witted among us that, as Hamlet would say, something is rotten in the state of Denmark; and because the American Institute of International Law has confessed its faith in justice as the basis of law, and has endeavored to state, and has actually stated, within the compass of six articles, the fundamental principles of justice obtaining in civilized nations, and recognized as capable of obtaining between and among nations, in the Declaration of Rights and Duties adopted by the Institute of International Law at its first session at Washington, January 6, 1916. Although you are familiar with the Declaration and with the articles themselves, and the sense in which they are to be understood, as it is the sense in which they have been applied by courts of justice in construing and deciding international questions, let me repeat them for purposes of clearness, as they are material to my argument, and let me also indulge in a word of comment. Omitting the preamble, which, however, is very important, as it lays the foundation upon which the rights and duties of nations are based, the articles are:

> I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States.
>
> II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.
>
> III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the

Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.[1]

Now, the word of comment for which I must ask your indulgence is that, if the first five of these articles are an analysis and summary, as I believe they are, of the principles of justice obtaining in every civilized country, and are the result of centuries of development, it is possible to reverse the process and, from these five principles of justice, to deduce and to frame the rules of conduct based upon them and necessary to give them effect. It may be easier to analyze, but we must synthesize as well. We need only follow the experience of nations with their internal law, and accepting the principles of justice universally recognized, and therefore fundamental, we can derive from them the rules of law which should control the conduct of nations. They may differ, perhaps, in

[1] Scott: *The American Institute of International Law: its declaration of the rights and duties of nations* (Washington, 1916), p. 88.

form, perhaps in content, perhaps in sanction, because we are dealing in one case with natural persons and in the other case with artificial persons which we call States. As conditions differ we will expect the rules of law concerning them to differ. But however that may be, we must build in accordance with a definite plan and upon firm foundations if we expect our structure to stand and to prove itself adequate to the needs of nations.

Let me indulge in a further comment. If the conduct of nations is to be controlled by rules of law, based upon experience had with justice, we must agree that the State, however large, however powerful, however numerous may be its people, is nevertheless subordinated to rules of law based upon fundamental and generally recognized principles of justice, because, if the State be not subject to law but is a law unto itself, there can be no general standard of conduct based upon law; and we must further agree that the State shall not determine for itself the rule of law which it will apply in a given case, because if the State decides for itself we may have anarchy instead of harmony, as we may find ourselves confronted with as many different interpretations of the same rule of law, based upon the same principles of justice universally recognized, as there are States.

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A rule of law must be observed, whether it be customary or conventional—that is to say, whether it be usage hardened into custom and evidenced by the practice of nations, or whether it be in the form of treaty or convention negotiated by nations and by ratification given the form of an international statute. We know in our daily life that it is useless to make contracts unless they are to be kept and unless they are kept. If we believed that they would not be observed we would not have made them, and we would hesitate to make contracts at

all, or to make contracts with those who did not observe them. The world of affairs needs contracts; the world of affairs insists that they be kept; the world of affairs has provided agencies to secure their observance.

Now, it is equally necessary that contracts be made by nations—and treaties are contracts—that they should be kept, and that there should be agencies to secure their observance. Otherwise, it is foolish to make them; indeed, it is worse than foolish, because each contract broken discredits the system and renders international law a source of merriment to the unbelieving.

We do not need authority for the statement that contracts between natural persons must be kept, and we do not need authority for the contention—I use the word advisedly—that contracts between artificial (I had almost said unnatural) persons must be kept. The system of jurisprudence of every civilized country accepts the axiom of the Roman law that *pacta servanda sunt,* which may be freely translated that agreements are to be observed. And without arguing or elaborating the point, I content myself with this brief quotation.

The case appears to be different with nations, if we test profession by practice; and yet, if the reason in each instance is the same, I should not need to reenforce the statement, which I have called a contention, that treaties be kept, and I should not need to elaborate the further statement, which I must likewise call contentious, that conventions can only be modified or varied by the parties to them, just as contracts between individuals can only be modified or varied by the parties. Yet if authority be needed we have it, and it is the solemn declaration of the nations of light and leading and which we have been accustomed to consider as holding aloft the torch of civilization. Let me briefly state the circumstances of the important document to which I refer and which

I shall presently quote, and let me premise that it is but a hundred words, inasmuch as simple and fundamental truths are felt and often need not be expressed, or, if expressed, are indicated, as it were, rather than stated at length.

By the 11th article of the Treaty of Paris of March 30, 1856, putting an end to the Crimean war, and to which Austria, France, Prussia, Russia, Sardinia, and Turkey were parties, Russia and Turkey were forbidden to keep vessels of war in the Black Sea. Let me quote the exact text of the article, as it is very material to the present purpose:

> The Black Sea is neutralized: its waters and its ports, thrown open to the mercantile marine of every nation, are formally and in perpetuity interdicted to the flag of war, either of the Powers possessing its coasts, or of any other Power, . . .[1]

Taking advantage of the Franco-Prussian War of 1870, and of circumstances which need not be related here, Russia, by its own action, declared this provision of the treaty to which it was a party to be abrogated. It was, in one sense, a small matter, and it was no doubt as unwise in the Powers as it was humiliating to Russia to have inserted such a provision in the treaty; but, whether wise or foolish, or humiliating, the clause in question formed an integral part of the treaty and the claim of Russia to abrogate it was a claim to modify or vary a solemn treaty at its whim or pleasure. Nay more, it was a claim which, if allowed, would permit if not actually authorize any, and therefore every, nation to modify or vary a treaty to which it was a party, without the consent of the signatories, whenever, in its opinion, a clause

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[1] *British and Foreign State Papers,* vol. 46, p. 12; Thomas Erskine Holland: *The European Concert in the Eastern Question* (1885), p. 247.

agreed to and accepted had become burdensome and contrary to what it professed to consider its best interests.

This was the attitude of the Powers at that time, and in considering "the question in whose hand lay the power of releasing one or more of the parties to the treaty from all or any of its stipulations," Lord Granville, then Her Majesty's principal Secretary of State for Great Britain, said:

> It has always been held that the right belongs only to the governments who have been parties to the original instrument. The despatches of the Russian Government appear to assume that any one of the Powers who have signed the engagement may allege that occurrences have taken place which in its opinion are at variance with the provisions of the treaty, and though their view is not shared nor admitted by the co-signatory Powers, may found upon that allegation, not a request to those governments for a consideration of the case, but an announcement to them that it has emancipated itself, or holds itself emancipated, from any stipulations of the treaty which it thinks fit to disapprove. Yet it is quite evident that the effect of such doctrine and of any proceeding which, with or without avowal, is founded upon it, is to bring the entire authority and efficacy of treaties under the discretionary control of each of the Powers who may have signed them; the result of which would be the entire destruction of treaties in their essence.[1]

The signatories of the Treaty of Paris therefore met in conference to consider the matter, and they adopted a declaration on January 17, 1871, to which France adhered on March 13, 1871, which, with the signatures appended, reads as follows:

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[1] William Edward Hall: *A treatise on international law* (Oxford, 1895), pp. 371–372.

The plenipotentiaries of the North German Confederation, Austria-Hungary, Great Britain, Italy, Russia, and Turkey, assembled today in conference, recognize that it is an essential principle of the law of nations that no Power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, except as the result of the consent of the contracting parties, by means of an amicable understanding.

In faith of which the said plenipotentiaries have signed the present protocol.

Done at London, this 17th day of January, 1871.

BERNSTORFF.
APPONYI.
GRANVILLE.
CADORNA.
BRUNNOW.
MUSURUS.
13th March, 1871. BROGLIE.[1]

There is no virtue in keeping an agreement when it is to our advantage to do so. The virtue, if virtue it be, only appears when the treaty hurts. Experience shows that treaties which are advantageous are kept, as are treaties which do not lay too great a burden or involve too great a sacrifice; and it may be said in this connection that the less the sacrifice the greater the observance of the treaty. Therefore, the part of wisdom appears to be not to ask too much of the nations at any one time, but that, instead of taking a leap, which may be a leap in the dark, we should take an infinite series of little steps, each in advance of the other, each springing naturally out of its predecessor, and each confirmed by experience, before the next step is taken. This is indeed *festina lente,* but it is progress, although slow; it is sure, for what is gained in this way is liable to be observed and not lost in times of storm and

[1] *British and Foreign State Papers,* 1870–71, vol. 61, pp. 1198–99.

stress. The fable of the Tortoise and the Hare is not wholly confined to individuals; it applies as well to nations. The incident of the dog grasping for its shadow and losing the bone, applies as well to nations. Let me recount the fables to you, for I fear that in these latter days we lose sight of the general principles in our eagerness for the details; so that, as our German friends put it, we can not see the forest for the trees. Let me preface the fables with a proverb from Solomon: "Wisdom is the principal thing; therefore get wisdom; and with all thy getting, get understanding."

Although Aesop has not hitherto been quoted as an authority on international law and on international relations, I nevertheless venture to vouch him as the safe and sure model to follow. "A Hare," he tells us, "was one day making fun of a Tortoise for being so slow upon his feet. 'Wait a bit,' said the Tortoise; 'I'll run a race with you, and I'll wager that I win.' 'Oh, well,' replied the Hare, who was much amused at the idea, 'let's try and see'; and it was soon agreed that the fox should set a court for them, and be the judge. When the time came both started off together, but the Hare was soon so far ahead that he thought he might as well have a rest; so down he lay and fell fast asleep. Meanwhile the Tortoise kept plodding on, and in time reached the goal. At last the Hare woke up with a start, and dashed on at his fastest, but only to find that the Tortoise had already won the race." From this Aesop draws the conclusion, which I would apply to nations, "Slow and steady wins the race."

Again to quote Aesop, "A Dog," he informs us, "was crossing a plank bridge over a stream with a piece of meat in his mouth [other versions supply the dog with a bone] when he happened to see his own reflection in the water. He thought it was another dog with a piece of meat twice as big; so he let go his own, and flew at the other dog to get the larger piece.

But, of course, all that happened was that he got neither; for one was only a shadow, and the other was carried away by the current."

Aesop does not draw the moral from this little tale, because, perhaps, it was obvious, in his opinion; and indeed, obvious it has been from his day to this. Haste, the English proverb says, "makes waste"—a fact which advocates of peaceable settlement may one day learn.

If, then, there is a difference between the willingness of nations to conclude those treaties which are advantageous and which concern a subject-matter with which they are familiar because the world has had experience with it, and treaties which impose burdens or deal with a subject-matter in which the world has not had experience, or but limited experience, is it not the part of wisdom to recognize this distinction and, by recognizing it, only lay upon nations burdens which experience shows that they can and, what is not less important, that they are willing to bear; and is it not the part of wisdom, if there be no experience, to go part of the way at one time and to limit the application of the treaty to a short period, so that, if the experience is unfavorable, the treaty does not need to be renewed, but if the experience is favorable, the convention may be continued for a longer period, perhaps indefinitely, and then a further step be taken in advance.

Without pausing to reenforce a general principle by unnecessary illustrations, let me suggest that treaties of a problematical character be limited to a very, very short time. We can not be wiser than the rest of mankind, and inasmuch as every-day experience shows us that individuals are willing to pledge themselves to a line of conduct as to which they have doubt or scruples, if they know that they are not bound for a long period, so nations, which after all are but individuals grouped more or less artificially, may like-

wise be willing to stretch a point if they are assured by the very instrument to which they set their hands and seals that they are to be bound but for a short time, and that the renewal of the treaty, or rather its continuation, depends upon actual experience, because if not denounced or abrogated at the expiration of the time for which it is concluded it should continue for a further period. And in this matter negative is as good as positive experience; for if none of the consequences which were feared or anticipated have happened we may count upon a continuance of the treaty, just as if favorable experience had been had, because nations, like individuals, prefer the old rut to the new road, and they are willing to keep on where they might have been unwilling to begin. In this way we may stimulate the good faith of nations, we encourage them to act upon their good faith, and we do not make it difficult for them to do so.

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Now, it must be understood that these three matters which I have ventured to call essential to international relations must be regarded by all nations as rights of all and placed under the guaranty of all, that all have a like interest in equality, that all have an equal interest in justice and that the happiness of all must depend upon the observance of law, customary or international, and that in case of the violation of any one of these it is the right, nay, the duty of each to protest, not merely in its own right and in its own name, but in the right and name of every member of the society of nations.

It is admitted to be the right and the duty of a neutral nation to protest if the action of a belligerent affects injuriously the persons or the property of that neutral. The books are full of protests in such cases, and a large part of the correspondence of neutral nations since the outbreak of the great war in August, 1914, consists of the protests of neutrals to

belligerents. It is not so generally recognized that a neutral nation has a right to protest, although its citizens, or their property, may not have been directly injured by belligerent action, or that it be the right and duty for a neutral nation to protest against a violation of neutral right, even although neither the lives of its citizens nor their property are directly affected. The reason is that the violation of the right of one neutral is a violation of the right of all neutrals; for if a belligerent can violate at its pleasure a rule of law which today affects nations A, B, or C, it may tomorrow violate the same rule of law affecting the interests of nations X, Y, and Z. Indeed it is not the injury to the person or the injury to the property which matters. It is the withdrawal of the protection of the rule of law, upon which both life and property depend. Withdraw the law, and the person and property of the neutral are at the mercy of the belligerent.

It is correct to say that a foreign nation would not be justified in protesting a rule of municipal law until either its citizens or subjects or their property be injured. It is not to be presumed that a municipal law has been passed which will be interpreted as contrary to international law, and it is a canon of construction that a municipal law will be presumed to be consistent with international law unless such a construction is impossible. Thus, in the case of the *Charming Betsy*, decided by the Supreme Court of the United States in 1804, Chief Justice Marshall said:

> It has also been observed, that an act of Congress ought never be construed to violate the law of nations, if any other possible construction remains, and consequently, can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country.[1]

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[1] 2 Cranch, 64, 118.

The presumption is either that the law is not inconsistent with the rule of international law, or that it will not be applied to foreign persons or interests in such a way as to violate the rule of international law. Even in these cases it would be proper to call attention to the probable consequences of the statute.

But the nation passing the statute is sovereign within its territory, and it has the right to exercise its sovereignty in such a way as to affect all persons, alien or native, and all property within its jurisdiction. The case is entirely different in international law. No nation has a right to make international law; no nation has a right to give to its municipal statute international effect; no nation has a right to extend its statutes in such manner as to interfere with the rights of other nations. This arises from the independence and equality of nations. As Sir William Scott, later Lord Stowell, put it in 1817, in deciding the case of *Le Louis:*

> two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct States. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all States meet upon a footing of entire equality and independence, no one State, or any of its subjects, has a right to assume or exercise authority over the subjects of another.[1]

[1] 2 Dodson, 210, 243.

The language of Chief Justice Marshall, in the case of the *Antelope,* decided in 1825, is no less positive, and can not be too often quoted:

> No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all, by the consent of all, can be divested only by consent; and this [slave] trade, in which all have participated, must remain lawful to those who can not be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations; and this traffic remains lawful to those whose governments have not forbidden it.[1]

Now, if international law is largely a thing of usage and of usage hardened into custom, nations can not afford to allow one of their number to embark upon a course which, if continued, and if submitted to by them, will result in a precedent binding their conduct, if not their conscience. Lest usage shall harden into custom and silence seem to give consent, it is the right and it is the duty of neutral nations to state firmly and positively that they will not allow a violation of international right to become an exception to the rule, which it will be if, without protest, they permit the belligerent to violate the rule of law.

Again, if no one nation can make a law of nations, and if a nation is only bound by what it agrees to, it follows that a rule to be regarded as forming part of the law of nations must be made by all or consented to by all. Differing from municipal law, which is made by one nation, international law is made

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[1] 10 Wheaton, 66, 122.

by the many, or by all in common. The very moment, therefore, that any nation, however powerful, arrogates to itself the right to abrogate a rule of international law—for violation of a right of neutrals without the consent of neutrals is in effect a claim to abrogate the rule—it is the right of neutrals to interpose an objection; and if the view stated above be correct, it is the duty of neutrals to do so, whether or not they seem to be directly affected in the persons of their subjects or citizens, or of their property. If international law were as municipal law, the rule of one country, this could not be so. But as it is the rule of all countries, the violation of that rule is in effect the violation of it for all neutrals, because it is the law of all neutrals, and not merely the right of the particular country.

A case in point will make this clear; and in order that no criticism may seem to be made of foreign countries, an American illustration will be chosen. On November 8, 1861, the United States man-of-war *San Jacinto,* under the command of Captain Charles Wilkes, stopped the steamer *Trent,* took off two civil passengers, Messrs. Mason and Slidell, commissioners from the Confederate States of America to Europe, and thereafter allowed the vessel to continue its passage. The *Trent* was a British mail packet, therefore a neutral vessel, on its way from Havana to St. Thomas. Under international law then existing and as it now stands, the United States did not have the right to remove Mason and Slidell, although Secretary of State Seward claimed that it would have been proper for Captain Wilkes to capture the vessel and to take it into an American port, in order to have it condemned for carrying the Confederate commissioners, who were apparently regarded by the American authorities as in the nature of contraband. Great Britain protested against the removal of civil passengers from a British and therefore neutral vessel, and it was clearly both the right and the duty of Great Britain to

protest. The United States yielded, and returned Mason and Slidell to British custody.

But there was more to the incident than this, otherwise it would not be cited in this connection. France, Prussia, and Austria also formally protested against the action of the United States in removing Mason and Slidell from the *Trent*, and Russia called the matter informally to the attention of the United States. On December 3, 1861, the French Imperial Minister of Foreign Affairs, M. Thouvenel, instructed the French Minister at Washington to wait upon Secretary Seward, to read to him the instruction and to leave a copy with him should he desire it. The Minister of Foreign Affairs laid the foundation for his protest in the following passage:

> The desire to contribute to prevent a conflict, imminent perhaps between two Powers towards which it is animated by sentiments equally friendly, and the duty to maintain certain principles essential to the security of neutrals with the effect of protecting the rights of its own flag from injury, have convinced it [the Government of the Emperor], after mature reflection, that it can not under these circumstances remain altogether silent.[1]

After this expression of friendly regard, M. Thouvenel discussed the merits of the incident, and after expressing the views of his government, thus continued:

> Not wishing to enter into a more thorough discussion of the questions raised by the capture of Messrs. Mason and Slidell, I have said enough about it, I believe, to establish that the Cabinet at Washington would not be able,

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[1] Bernard: *A historical account of the neutrality of Great Britain during the American Civil War* (London, 1870), p. 196.

without infringing upon the principles for which all neutral Powers are equally interested in assuring respect or without contradicting its own conduct up to this time, to give its approval to the proceedings of the commander of the *San Jacinto*.[1]

One more protest may be quoted as of more than passing interest. On December 25, 1861, the Prussian Minister of Foreign Affairs, Count von Bernstorff, a name familiar to the American people at the present time because of the fact that the present German Ambassador to the United States bears the honored name of this minister, and is his son, instructed the Prussian Minister to the United States, Baron von Gerholt, to call upon Secretary Seward to read him the contents of an instruction, and to leave a copy of it with him should the American Secretary of State desire it. This particular instruction of the Prussian Minister of Foreign Affairs dealt with the *Trent* affair, courteously but firmly stating the rights of neutrals, and protesting against their violation in this instance. He said:

> The maritime operations undertaken by President Lincoln against the Southern seceding States could not, from their very commencement, but fill the King's Government with apprehensions lest they should result in possible prejudice to the legitimate interests of neutral Powers.
>
> These apprehensions have unfortunately proved fully justified by the forcible seizure on board the neutral mail-packet the *Trent*, and the abduction therefrom, of Messrs. Slidell and Mason by the commander of the United States man-of-war the *San Jacinto*.
>
> This occurrence, as you can well imagine, has produced in England and throughout Europe the most profound sensation, and thrown not cabinets only, but also public opinion, into a state of the most excited expectation. For,

[1] *Ibid.*, p. 198.

> although at present it is England only which is immediately concerned in the matter, yet, on the other hand, it is one of the most important and universally recognized rights of the neutral flag which has been called into question.[1]

It will be observed that Count von Bernstorff does not speak in this passage of Prussian rights as such. He takes the broader ground that a violation of the neutral rights of any country is a violation of the neutral rights of all countries, and therefore the rights of Prussia. He recognizes that the claim to violate neutral rights in the case of Great Britain was in effect the claim to violate the neutral rights of every other State belonging to the society of nations, and because of that fact, the incident had, to quote Count von Bernstorff's explanation, "produced in England and throughout Europe the most profound sensation, and thrown not cabinets only, but also public opinion, into a state of the most excited expectation."

But strong as is this note, just as are its views, and admirable as is its temper, the Prussian Government, as will be seen in a further quotation from the instruction, did not wait for an inquiry or investigation to show whether Captain Wilkes' action was by the direction of his government or whether it met with the government's approval. In Count von Bernstorff's opinion, it made no difference in effect whether Wilkes was acting under instructions, or whether he acted upon his own initiative. In either case the world was confronted with the violation of neutral rights, and therefore a protest was justified and requisite. Thus:

> In the absence of any reliable information we were in doubt as to whether the captain of the *San Jacinto*, in the

[1] *Ibid.*, p. 199.

> course taken by him, had been acting under orders from his government or not. Even now we prefer to assume that the latter was the case. Should the former supposition, however, turn out to be the correct one, we should consider ourselves under the necessity of attributing greater importance to the occurrence, and to our great regret we should find ourselves constrained to see in it not an isolated fact but a public menace offered to the existing rights of all neutrals.[1]

As Chief Justice Waite has said in the *Arjona* case, decided by the Supreme Court of the United States in 1887:

> International obligations are of necessity reciprocal in their nature. The right, if it exists at all, is given by the law of nations, and what is law for one is, under the same circumstances, law for the other.[2]

In the society of nations as at present organized, there is no central authority and there is nobody authorized to speak and to act for the society as a whole. The maintenance of international law depends upon the enlightened judgment and good faith of the different nations. Each acts for itself, but in so doing it acts for all, because the right of one is the right of all, and the duty of one, unless it be based upon a special treaty, is the duty of all.

If we are not our brother's keeper, we are, or at least we should be, conservators of the law. It is the right, and indeed it is the duty, of neutrals, not of any particular neutral, to protest against the violation of neutral rights.

"Inasmuch as ye have done it unto one of the least of these, my brethren, ye have done it unto Me."

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[1] *Ibid.*, p. 200.

[2] 120 *United States Reports*, 479, 487.

Although we recognize that all nations are equal before, in, and under law, and that each is sovereign, free and independent, we must nevertheless recognize that they are in fact interdependent, that the interest of all is superior to the interest of any one, however powerful, and that therefore the interest of the society of nations, that is to say, of the nations in association, because they must associate unless they are to exist in isolation, is greater than the interest of any one. We must become conscious of the existence of nations in society, of their rights in association or in society and of the rights of the latter as against the privileges or rights of the individual states. I do not need to prove by old saw or modern instance that there is such a thing as the society of nations, because I can refer to the book and chapter in which its existence and the purposes for which it exists are authoritatively stated, and this particular book and chapter is the joint product of all the civilized states, accepting and applying international law in their mutual relations, invited to and participating in the First and Second Peace Conferences held at The Hague in 1899 and 1907. The preamble to the Peaceful Settlement Convention not only states the existence of the society, but the reason for its existence, finding that reason to consist in the solidarity of nations which is necessary to effect the purposes required by their solidarity. The preamble states the Powers participating in the conferences as recognizing "the solidarity which unites the members of the society of civilized nations." Now this simple statement appears to me to be as fundamental as it is simple. In the first place, it recognizes the interests of all as opposed to the interests of any one; in the second place, it recognizes that the interests of the whole are the bond uniting the nations; in the third place, it states, it does not argue, the existence of the society of nations, and, finally, in the fourth place, it limits the society to the

civilized nations, which to me at least seems to imply that a nation can not be civilized without belonging to the society and without recognizing the solidarity, that is to say, the interests of the whole as superior to its own particular interests.

It is not necessary that the nations should meet in conference and declare in a formal treaty that the high contracting parties recognize that there are such bodies politic as civilized nations, that these civilized nations are members of the society of nations and that the society of nations is united by the solidarity of interests of the nations as a whole as distinct from the interests of a particular nation. Indeed, the recognition in the preamble is more convincing as showing that the society exists, and that it does not need to be created or declared. But, as I have just said, the statement is as fundamental as it is simple, because it is a fact that states in association or states recognizing a society of which they are members constitute a body politic without specific agreement or convention to that effect. Important as is this fact and the conclusions to be drawn from it, I do not need to prove by elaborate argument that the existence of states in association forms a body politic without any action taken to that end, because we have a precedent in point and so fashioned to our hand that we could almost think that it was made on purpose. It is from the United States, in which the international element enters so largely and is so important. In order to make the case clear and its application inevitable, let me repeat, that on July 4, 1776, the English speaking colonies of North America, with the exception of Canada and Newfoundland, proclaimed themselves to be free and independent states, that the Articles of Confederation, composing a loose union in the nature of a league and in which the states declared themselves to be sovereign, free and independent, were concluded on March 1, 1781, that the Constitution of the United States, creating a more perfect union, was drafted in 1787 and went

into effect March 4, 1789. Now, the particular case in question, *Respublica v. Sweers,* was tried and decided in 1779, previous to the Articles of Confederation and the Constitution, when the states were indeed acting together, but before they had adopted any articles of union or had given to this union legal form and effect. As stated in the report of this interesting case, which was tried in the Supreme Court of Pennsylvania—for at that time there was neither formal union nor court of the union, supreme or inferior—one Sweers, a deputy commissary-general of military stores in the armies of the United States, was indicted in November, 1778, for forgery upon two counts, the first for altering a bill, the second for forging a receipt, with, as the indictment says, "intent to defraud the United States." Sweers was tried before a special jury on the 14th of April, 1779, when he was convicted upon both indictments. Mr. Chief Justice McKean of the Supreme Court of Pennsylvania thus addressed the defendant, in delivering sentence:

> After a fair and full trial, you have been convicted of the crime of forgery, upon two indictments, by a special jury of your country. . . . Your counsel have taken several exceptions to the form and substance of these indictments, upon a motion in arrest of judgment.
>
> The first exception was, "that, at the time of the offense charged, the United States were not a body corporate known in law." But the court are of a different opinion. From the moment of their association, the United States necessarily became a body corporate; for, there was no superior from whom that character could otherwise be derived. In England, the king, lords and commons, are certainly a body corporate; and yet there never was any charter or statute, by which they were expressly so created.[1]

[1] 1 Dallas, 41, 44.

The society of nations only needs to become conscious of its existence in order to perceive that it is a body politic, and in order to draw the necessary conclusions from its existence as a body politic. The legal foundation is thus laid upon which to erect any form of organization, to create any agencies and to invest them with such power in the interest of the society as to the civilized nations composing it may seem meet and proper.

If we return to the Pacific Settlement Convention and analyze the preamble, we shall see to what extent the nations have acted in the interest of the society as such, although apparently unconscious of its corporate nature.

We find that the powers through their accredited delegates express in the first two paragraphs of the preamble their purpose, stating their countries to be "animated by a strong desire to concert for the maintenance of the general peace," and, because of this desire "resolved to second by their best efforts the friendly settlement of international disputes." That is to say, they first express a desire and then a determination. They next recognize, as I have previously stated, the solidarity which unites the members of the society of civilized nations, and by so doing they state at one and the same time the existence of the society and the bond which holds its members together. This bond they called solidarity, which I have interpreted to mean the interests of all as distinct from the interests of one, and which may therefore be called the community of interests as distinguished from particular or separate interests. Or, to express it in a more general and perhaps more definite form, the preamble to the Final Act of the First Conference states that it was convoked by his Majesty, the Emperor of All the Russias, "in the best interests of humanity," and the preamble of the Second Conference of 1907 states that it was convoked "for the purpose of giving a fresh

development to the humanitarian principles which served as a basis for the work of the First Conference of 1899." We thus have it stated upon the highest authority, namely, upon the authority of the Second Conference, that the guiding principle of the First was the best interests of humanity, and that the guiding principle of the Second was a fresh development of the principles of humanity proclaimed by the First Conference.

I am therefore correct in stating that the bond of union is solidarity, that solidarity means a community of interests and that these interests were, in the opinion of the Conference, the best interests of humanity. I would myself personally state those interests in a single word,—justice. To return to the preamble to the Peaceful Settlement Convention. After expressing the desire for the maintenance of international peace and resolving to settle international disputes in a friendly manner, so as to preserve peace, and recognizing the solidarity uniting the society of nations, the powers represented in the First and in the Second Hague Peace Conferences proclaim in a later section of the preamble that "the security of states and the welfare of peoples" depend upon "the principles of equity and right," and because of this fact, they declare it to be "expedient to record in an international agreement the principles of equity and right" on which they base "the security of states and the welfare of peoples." Without seeking to give to the terms of the preamble a meaning which was not in the minds of the delegates or to pervert their language to sustain a thesis, I am of the opinion that we would be justified in concluding that the "principles of equity and right" referred to, but not stated, are synonymous with justice, and if it did not seem to be presumptuous on our part, I would venture to suggest that the American Institute of International Law in its first session not only expressed itself as

sharing the opinion of the august initiator of the international peace conference, as to the expediency of stating the principles of justice in an international agreement, but that, perhaps with the enthusiasm of youth, it went further and stated and defined those principles in its Declaration of the Rights and Duties of Nations in the form of an international agreement or as the basis of such an agreement.

But, although the Conference did not attempt to define the principles of equity and right, they nevertheless expressed their deliberate opinion that, without the principles of equity and right, states would lack security and the welfare of peoples a guaranty, and we are, therefore, prepared to have them declare themselves, as they do in another part of the preamble, "desirous of extending the empire of law and of strengthening the appreciation of international justice." They recognize, without arguing it, that justice can not bring forth its perfect fruits unless there be appropriate agencies for its administration; and without saying that the mere existence of the society of nations requires a law of the society, they nevertheless admit the necessity of the law in proclaiming principles of equity and right as the foundation upon which the security of states and the welfare of peoples rest; and again, without saying that an agency of the society is necessary in order to ascertain, to interpret and to apply the law in appropriate cases, they nevertheless admit that such an agency would contribute effectively to maintain the general peace, to settle in a friendly manner international disputes, to extend the empire of law, and to strengthen the appreciation of international justice. That this is no forced construction is evident from the language of the preamble, according to which the contracting parties are "convinced that the permanent institution of a court of arbitration accessible to all in the midst of independent powers will contribute effectively to this re-

sult." If I may say so, the Conferences were very happy in stating the consequences of establishing an international court of justice and in defining its relation to the powers, for the court was to be created by the society, of which it is therefore to be the organ. It is to be the court of all, not the court of one, because it is to be accessible to all, and, finally, and admirably stated, it is to be in the midst of independent powers. We have heard much of a free church in a free state, and we are, I am quite sure, destined to hear much in the future of an accessible court in the midst of independent powers.

The delegates of the nations felt it necessary that the organ of the society which they called a court of arbitration should have its procedure stated and defined in advance, and it is not among the least services of the Conference that it drafted a code of procedure contained in the pacific settlement convention for the arbitration of disputes through the court which the Conference established. And it should be stated in this connection, although it is not mentioned in the preamble, that the court created by the powers for the society of nations was to act under the supervision of the powers forming the society of nations. For this purpose the Conference created a permanent administrative council composed of the diplomatic representatives of the signatory powers accredited to The Hague and under the presidency of the Dutch Minister of Foreign Affairs, "to settle its rules of procedure and all other necessary regulations," to "decide all questions of administration which may arise with regard to the operations of the court," to communicate "to the signatory powers without delay the regulations adopted by it," and to furnish them "with an annual report of the labors of the court, the working of the administration, and the expenditure."

Now, my purpose in dwelling upon the preamble and in calling to your attention the administrative council is to make

it clear that the Conference, unconsciously it may be, but nevertheless assuredly, went a long way to recognize certain fundamentals of organization with which the delegates were familiar in their own countries, but which had not been hitherto applied to the nations as a whole. Thus, the Conference recognized, first, the existence of a society of nations composed of the civilized states bound together by a community of interests; second, the function of the Conference as a factor in developing "the humanitarian principles" which I have ventured to identify with justice; third, the necessity of a court for the society in order to administer justice between and among the civilized states forming the society, by defining, by interpreting and applying the rule of law to disputes between and among them; and fourth, the advisability of a permanent administrative council, composed of the contracting members of the society of nations to establish the court as the organ or agency of the society and to supervise its conduct.

We have here an unconscious recognition it may be of the three-fold division of powers in a political society, for the society of nations is a political association and is, if it chooses to be, a body politic. In the Hague Conferences we recognize an international body which recommends, if it does not actually make, laws for the society, because the conventions and declarations drafted by the delegates, and approved by the Conference, are transmitted by the Dutch Minister of Foreign Affairs to the civilized powers forming the society of nations, to be ratified by the appropriate branches of the contracting parties and to be adhered to by the appropriate branches of the powers which did not attend the Conference, should they be minded to unite themselves with the contracting powers. In the administrative council we recognize the germ of an executive, that is to say, of a body to carry into

effect the projects of the Conference which have been ratified by the nations and to supervise their execution and operation. We also recognize in the proposal of a court of arbitration the first step towards an international judiciary, as the organ or agent of the society, just as a judiciary is an organ or agent of every member of the society of nations.

Believing, as I do, that international organization is the question of the day and that it must confront us until it is solved, that the relations of nations can only be peaceable if they are based upon justice, I am convinced that there must first be some agency of the society to recommend, if not to make, the law which is to govern the conduct of nations; that there must, second, be some agency of the society to notify the powers in order that the recommendations of the Conference may be ratified; to call to their attention the terms of such acts of the Conference as have been ratified in order to prevent their violation, and to exercise such supervision as the society may decide to be compatible with the independence of its members on the one hand and their solidarity on the other, and that third, there must be a court of the society to ascertain, to interpret and to apply the law of nations, customary or conventional, to the disputes which necessarily must arise between and among the members of the society, if peace founded upon justice is ever to prevail in a war-ridden world.

I have ventured to put together certain suggestions which have been made from time to time, and which if adopted seem to me calculated to advance the cause of international organization. I have already invoked Aesop's authority in the course of this address and I would like to invoke it again, as his fable of the Mice in Council seems peculiarly applicable:

> Once upon a time [he said] all the Mice met together in Council, and discussed the best means of securing themselves against the attacks of the Cat. After several

suggestions had been debated, a Mouse of some standing and experience got up and said, "I think I have hit upon a plan which will ensure our safety in the future, provided you approve and carry it out. It is that we should fasten a bell round the neck of our enemy the Cat, which will by its tinkling warn us of her approach." This proposal was warmly applauded, and it had been already decided to adopt it, when an old Mouse got upon his feet and said, "I agree with you all that the plan before us is an admirable one: but may I ask who is going to bell the Cat?"

The question thus propounded still awaits an answer. Nevertheless, with a full appreciation of the difficulties with which the subject bristles, and, I hope, a due and a becoming sense of modesty, I venture to lay before you my little bell, or, rather, a whole series of bells, well knowing that, without charity, they will merely be "as sounding brass, or a tinkling cymbal;" and I do so in the hope that, if you applaud the project and decide to adopt it, the nations themselves may be trusted to bell their enemy. Let me read the project.

I believe it to be feasible, and also to be the part of wisdom:

1. To urge the call of a Third Hague Conference to which every country belonging to the society of nations shall be invited and in whose proceedings every such country shall participate.

2. To advocate a stated meeting of The Hague Peace Conference which, thus meeting at regular, stated periods, will become a recommending if not a law-making body.

3. To suggest an agreement of the States forming the society of nations concerning the call and procedure of the Conference, by which that institution shall become not only internationalized, but in which no nation shall take as of right a preponderating part.

4. To request the appointment of a committee, to meet

at regular intervals between the Conferences, charged with the duty of procuring the ratification of the Conventions and Declarations and of calling attention to the Conventions and Declarations in order to ensure their observance.

5. To recommend an understanding upon certain fundamental principles of international law, as set forth in the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law on January 6, 1916, which are themselves based upon decisions of English Courts and of the Supreme Court of the United States.

6. To propose the creation of an international council of conciliation to consider, to discuss, and to report upon such questions of a non-justiciable character as may be submitted to such council by an agreement of the powers for this purpose.

7. To commend the employment of good offices, mediation, and friendly composition for the settlement of disputes of a non-justiciable nature.

8. To approve the principle of arbitration in the settlement of disputes of a non-justiciable nature; also of disputes of a justiciable nature which should be decided by a court of justice, but which have, through delay or mismanagement, assumed such political importance that the nations prefer to submit them to arbiters of their own choice rather than to judges of a permanent judicial tribunal.

9. To insist upon the negotiation of a convention creating a judicial union of the nations along the lines of the Universal Postal Union of 1906, to which all civilized nations and self-governing dominions are parties, pledging the good faith of the contracting parties to submit their justiciable disputes—that is to say, their differences involving law or equity—to a permanent court of this union, whose decisions will bind not only the litigating nations, but also all parties to its creation.

10. To endeavor to create an enlightened public opinion in behalf of peaceable settlement in general, and in

particular in behalf of the foregoing nine propositions, in order that, if agreed to, they may be put into practice and become effective, in response to the appeal to that greatest of sanctions, "a decent respect to the opinions of mankind."

Let me quote, and, by quoting, make my own as far as one can, the words of the great, the wise, and the generous French statesman, Mr. Bourgeois, whose language I have already quoted, uttered in a moment of inspiration at the Second Hague Peace Conference and in advocacy of the very principles for which the American Institute of International Law stands:

> The world longs for peace.
>
> For centuries we have put our faith exclusively in the formula: *Si vis pacem, para bellum;* that is to say, we have confined ourselves to the *military organization of peace.* We have got beyond this, but we should not be satisfied in forming a more humane organization, which I was about to call the *pacific organization of war.*
>
> The discussions which have taken place here in our midst have shown us the progress made in our views in this matter through education, and the new sentiment, each day more insistent, of the solidarity alike of nations and of mankind in the struggle against the fatality of nature. We have confidence in the increasing effect of these great moral forces, and we hope that the Conference of 1907 will force a still further development of the humane principles which guided the Conference of 1899, by assuring in fact as well as in theory the *juridical organization of peace.*[1]

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[1] *Deuxième Conférence Internationale de la Paix, 1907, Actes et Documents,* tome ii, p. 349.

MR. PRESIDENT, LADIES AND GENTLEMEN:

I can not close the address I have prepared for the opening session and which has, I am sure, severely taxed your patience, without expressing the very great pleasure which your invitation has given us to meet in the city of Habana, and without the assurance that the realization is greater than the anticipation, for who does not look forward to a visit to Habana.

The Institute and its members hope to show themselves worthy of your consideration and of your courtesy, and, while we shall always look back to the Habana session with pleasure and with pride, we cherish the hope that you may never regret opening your city and your hearts to us.

I have taken the liberty of offering in the introduction some remarks upon the Platt Amendment, which I regard as a protection against an assault from without, as a bulwark against misgovernment from within, and as a shield and a buckler even against the great republic to the north, should it be inclined to forget the responsibility it assumed and the solemn promise it gave to a generous, devoted and trusting people.

I believe that Cuba will always be free and independent. I hope that the United States will always stand by its promise. In this belief I shall live and in this hope I shall die.

THE RECOMMENDATIONS OF HABANA CONCERNING INTERNATIONAL ORGANIZATION, adopted by the American Institute of International Law at its Second Session in the City of Habana, January 23, 1917.

WHEREAS the independent existence of civilized nations and their solidarity of interests under the conditions of modern life has resulted in a society of nations; and

WHEREAS the safety of nations and the welfare of their peoples depend upon the application to them of principles of law and equity in their mutual relations as members of civilized society; and

WHEREAS the law of nations can best be formulated and stated by the nations assembled for this purpose in international conferences; and

WHEREAS it is in the interest of the society of nations that international agreements be made effective by ratification and observance on all occasions, and that some agency of the society of nations be constituted to act for it during the intervals between such conferences; and

WHEREAS the principles of law and equity can best be ascertained and applied to the disputes between and among the nations by a court of justice accessible to all in the midst of the independent Powers forming the society of civilized nations;

THEREFORE the American Institute of International Law, at its second session, held in the City of Habana, in the Republic of Cuba, on the 23d day of January, 1917, adopts the following recommendations, to be known as its *Recommendations of Habana.*

I. The call of a Third Hague Conference to which every country belonging to the society of nations shall be invited and in whose proceedings every such country shall participate.

II. A stated meeting of the Hague Peace Conference which, thus meeting at regular, stated periods, will become a recommending if not a law-making body.

III. An agreement of the States forming the society of nations concerning the call and procedure of the Conference, by which that institution shall become not only internationalized, but in which no nation shall take as of right a preponderating part.

IV. The appointment of a committee, to meet at regular intervals between the Conferences, charged with the duty of procuring the ratification of the Conventions and Declarations and of calling attention to the Conventions and Declarations in order to insure their observance.

V. An understanding upon certain fundamental principles of international law, as set forth in the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law on January 6, 1916, which are themselves based upon decisions of English courts and of the Supreme Court of the United States.

VI. The creation of an international council of conciliation to consider, to discuss, and to report upon such questions of a non-justiciable character as may be submitted to such council by an agreement of the Powers for this purpose.

VII. The employment of good offices, mediation, and friendly composition for the settlement of disputes of a non-justiciable nature.

VIII. The principle of arbitration in the settlement of disputes of a non-justiciable nature; also of disputes of a justiciable nature which should be decided by a court of justice, but which have, through delay or mismanagement, assumed such

political importance that the nations prefer to submit them to arbiters of their own choice rather than to judges of a permanent judicial tribunal.

IX. The negotiation of a convention creating a judicial union of the nations along the lines of the Universal Postal Union of 1906, to which all civilized nations and self-governing dominions are parties, pledging the good faith of the contracting parties to submit their justiciable disputes—that is to say, their differences involving law or equity—to a permanent court of this union, whose decisions will bind not only the litigating nations, but also all parties to its creation.

X. The creation of an enlightened public opinion in behalf of peaceable settlement in general, and in particular in behalf of the foregoing nine propositions, in order that, if agreed to, they may be put into practice and become effective, in response to the appeal to that greatest of sanctions, "a decent respect to the opinions of mankind."

Commentary on the Recommendations of Habana Concerning International Organization, Adopted January 23, 1917.

I. The call of a Third Hague Conference to which every country belonging to the society of nations shall be invited and in whose proceedings every such country shall participate.

If it be true that in a multitude of counselors there is safety and, as we may hope, wisdom, it necessarily follows that the larger the number of the nations met in conference the greater the safety and the greater the wisdom. Indeed, there are those, whose opinions are entitled to respect, who see in the meeting of the Hague Conferences a greater hope and a greater promise than in the work of their hands. The Hague Conference of 1899 was composed of the representatives of twenty-six States; its successor of 1907 represented officially no less than forty-four sovereign, free, and independent States, which, taken together, well nigh make up the society of civilized nations.

In speaking of the value of the Hague Peace Conferences of 1899 and 1907, Secretary Root said that:

> The most valuable result of the Conferences of 1899 was that it made the work of the Conference of 1907 possible. The achievements of the Conferences justify the belief that the world has entered upon an orderly process through which, step by step, in successive Conferences, each taking the work of its predecessor as its point of departure, there may be continual progress toward making the practice of civilized nations conform to their peaceful professions.

And, still further developing the same thought, the same great statesman said:

The question about each international conference is not merely what it has accomplished, but also what it has begun, and what it has moved forward. Not only the conventions signed and ratified, but the steps taken toward conclusions which may not reach practical and effective form for many years to come, are of value. Some of the resolutions adopted by the last conference do not seem to amount to very much by themselves, but each one marks on some line of progress the farthest point to which the world is yet willing to go. They are like cable ends buoyed in mid-ocean, to be picked up hereafter by some other steamer, spliced, and continued to shore. The greater the reform proposed, the longer must be the process required to bring many nations differing widely in their laws, customs, traditions, interests, prejudices, into agreement. Each necessary step in the process is as useful as the final act which crowns the work and is received with public celebration.

II. A stated meeting of the Hague Peace Conference which, thus meeting at regular, stated periods, will become a recommending if not a law-making body.

Without a radical reorganization of the society of nations, difficult, time-consuming, and perhaps impossible to bring about, the Conventions and Declarations adopted by the Conference are to be considered not as international statutes, but as recommendations, which must be submitted to the nations taking part in the Conference for their careful examination and approval. By the ratification of each of these, and by the deposit of the ratifications at The Hague in accordance with the terms of the Conventions and Declarations recommended by the Conference, they become at one and the same time national and international laws: national laws because they have been ratified by the law-making body of each of the countries, and international laws because, by the ratification and the deposit of the ratifications at The Hague, they have

assumed the form and effect of treaties, that is to say statutes, of the contracting parties.

On the method of procedure of such an international conference, Secretary Root said in his instructions to the Delegates of the United States to the Second Hague Peace Conference:

> In the discussions upon every question it is important to remember that the object of the Conference is agreement, and not compulsion. If such Conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the Powers can not be expected to send representatives to them. It is important also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the Powers represented. Comparison of views and frank and considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to real agreement upon matters which at the outset have appeared insurmountable. It is not wise, however, to carry this process to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future Conference in the hope that intermediate consideration may dispose of the objections. Upon some questions where an agreement by only a part of the Powers represented would in itself be useful, such an agreement may be made, but it should always be with the most unreserved recognition that the other Powers withhold their concurrence with equal propriety and right.
>
> You should keep always in mind the promotion of this continuous process through which the progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the definite results to be reached in that Conference, but also with reference to the foundations which may be laid for further results in

future Conferences. It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reach no definite agreement.

The irreducible minimum may well be the maximum of achievement at any given time, and in all our meetings, and in all our discussions, we should bear in mind the wise counsel of an illustrious French statesman at the First and Second Hague Peace Conferences that:

> We are here to unite, not to be counted.

III. An agreement of the States forming the society of nations concerning the call and procedure of the Conference, by which that institution shall become not only internationalized, but in which no nation shall take as of right a preponderating part.

The delegation of the United States to the Second Hague Peace Conference was thus instructed by the great and wise statesman, then Secretary of State:

> "You will favor the adoption of a resolution by the Conference providing for the holding of further Conferences within fixed periods and arranging the machinery by which such Conferences may be called and the terms of the program may be arranged, without awaiting any new and specific initiative on the part of the Powers or any one of them.

Mr. Root then went on to say:

> Encouragement for such a course is to be found in the successful working of a similar arrangement for international conferences of the American Republics. The Second American Conference, held in Mexico in 1901–2, adopted a resolution providing that a third conference should meet within five years, and committed the time

and place and the program and necessary details to the Department of State and representatives of the American States in Washington. Under this authority the Third Conference was called and held in Rio de Janeiro in the summer of 1906, and accomplished results of substantial value. That Conference adopted the following resolution:

"The governing board of the International Bureau of American Republics (composed of the same official representatives in Washington) is authorized to designate the place at which the Fourth International Conference shall meet, which meeting shall be within the next five years; to provide for the drafting of the program and regulations and to take into consideration all other necessary details; and to set another date in case the meeting of the said Conference can not take place within the prescribed limit of time."

There is no apparent reason to doubt that a similar arrangement for successive general international conferences of all the civilized Powers would prove as practicable and as useful as in the case of the twenty-one American States.

The delegation of the United States complied with both the letter and spirit of these instructions, brought the subject of a stated international conference to the attention of the delegates of the forty-four nations there assembled, and secured the following recommendation, a first step toward the realization of a larger purpose:

Finally, the Conference recommends to the Powers the assembly of a Third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding Conference, at a date to be fixed by common agreement between the Powers, and it calls their attention to the necessity of preparing the program of this Third Conference a sufficient time in advance to ensure its deliberations being conducted with the necessary authority and expedition.

In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory committee should be charged by the governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an international regulation, and of preparing a program which the governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This committee should further be intrusted with the task of proposing a system of organization and procedure for the Conference itself.

IV. The appointment of a committee, to meet at regular intervals between the Conferences, charged with the duty of procuring the ratification of the Conventions and Declarations and of calling attention to the Conventions and Declarations in order to insure their observance.

In Mr. Root's instructions to the American delegation to the Second Hague Peace Conference, the governing board of the International Bureau of American Republics, now called the Pan American Union, was suggested as a possible method of organization for the nations meeting in conference at The Hague. The American delegation did not lay before the Conference the method of organization found satisfactory to the American Republics and did not propose that it be adopted, because, as the result of private discussion, it appeared unlikely that the method would at that time meet with favor, and indeed it seemed probable that its proposal would prejudice those representatives of governments against the periodic meeting of conferences who thought they saw in cooperation of this kind a step toward federation.

There is, however, a body already in existence at The Hague, similar in all respects to the governing board of the Pan

American Union at Washington, which can be used for like purposes if the governments only become conscious of the services which it could render if it were organized and invested with certain powers. The body at Washington forming the governing board is composed of the diplomatic representatives of the American Republics accredited to the United States; the body at The Hague is formed of the diplomatic representatives of the Powers accredited to the Netherlands. If they should be authorized by their respective governments to meet, either in the Foreign Office or the Peace Palace at The Hague at regular intervals between the conferences, to be determined by themselves or their countries, they would, by the mere fact of this association, form a governing board in which all nations would of right be represented which cared to maintain diplomatic agents at The Hague. By the mere fact of this association they would also, even without express authority, gradually and insensibly assume the duty of procuring the ratification of the Conventions and Declarations of the Conference and of calling the attention of the Powers represented at The Hague to the Conventions and Declarations, and in case of need to their provisions, in order that they might be observed.

The first step toward this consummation has already been taken. Twenty-six nations at the First created and forty-four nations confirmed at the Second Hague Peace Conference an organization for administering the affairs of the so-called Permanent Court of Arbitration by availing themselves of the diplomatic agents accredited to The Hague, as shown in the following extract from the Convention for the Pacific Settlement of International Disputes:

> A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherlands Minister

for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau [of the Permanent Court of Arbitration], which will be under its direction and control.

It will notify to the Powers the constitution of the Court, and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It furnishes them with an annual report on the labors of the Court, the working of the administration, and the expenses.

What has been done for one may assuredly be done for another purpose, and, without changing the body, the nations merely need to enlarge its scope by having it perform the same services for each of the general interests affecting "the solidarity which unites the members of the society of civilized nations." If a governing board may act at Washington without affecting the sovereignty, freedom, and independence of twenty-one States, a governing board can likewise act at The Hague in the interest of and without affecting the sovereignty, freedom, and independence of forty-four States. There is only one thing needed—the desire so to do.

In the belief that the Powers may prefer to proceed more cautiously, the American Institute of International Law ventures to suggest on this point that the Conference might, upon its adjournment, appoint a committee charged with the duty of procuring the ratification of the Conventions and Declarations, and of calling attention to the Conventions and Declarations in order to secure their observance; and in the appointment of the committee the Conference might specify both the nature and extent of the authority with which it would be clothed. This would not be an attempt on the part of a Conference to bind its successor; it would be a recommendation of the Conference to the Powers represented in it, the binding force and effect of which would result solely from the acceptance and ratification of the agreement, as is the case with The Hague Conventions or Declarations.

The appointment of such a committee for limited and specific purposes is highly desirable, if other and better methods are not devised and preferred, and it is not without a precedent in its behalf and favor. Under the 9th of the Articles of Confederation of the United States the Congress appointed "a committee of the States," composed of one delegate from each of the thirteen States, to sit during the recess of the Congress, then a diplomatic, not a parliamentary body, to look after the interests of the States as a whole and to exercise some, but not all, of the powers delegated to the Congress by the States, which in the 2d of the Articles had declared themselves to be sovereign, free, and independent. It is important to note that in the Articles of Confederation we are dealing with sovereign States and to bear in mind that sovereignty is not lessened by its mere exercise, because after as before the Articles the States were sovereign. What thirteen sovereign, free, and independent States have done, forty-four sovereign, free, and independent States may do, if they

only can be made to feel and to see the consequences of this simple step in international development and supervision.

In further justification of this modest recommendation, the pacific settlement convention of the Hague Conferences may be cited which contains the germ of the recommendation. Article 27 of the Convention of 1899 and Article 48 of the revised Convention of 1907 deal with this matter. Thus Article 27 reads:

> The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

It will be observed that a duty is here either created or recognized, and either view is sufficient for present purposes.

> Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

The objection to this article is that it leaves the Powers free to take or not to take action, although it is stated to be a duty to do so. It can not be too often said that everybody's business is nobody's concern, and to give effect to the provision some person or body should be appointed whose duty it is to comply with the recommendation of the article. This defect was obvious to the delegates of the Second Conference, who apparently sought to remedy it by the following addition to the text of Article 27, which as amended became Article 48 of the revised Convention:

> In case of dispute between two Powers, one of them can always address to the International Bureau a note con-

taining a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

The amendment is limited to the parties in dispute. The signatory Powers appear to be overlooked, and yet the duty was created or recognized by the article as the duty of the signatory or contracting Powers to remind the disputants that the Permanent Court is open to them, and the amendment merely permits the Powers in dispute to avail themselves of the International Bureau to transmit a proposal of arbitration. Something more is needed and yet the amendment serves as a precedent. The article itself refers to the provisions of the convention, and expressly states that reminding the parties in dispute of the provisions of the convention is not to be regarded as an unfriendly act. Following the precedent created by the amendment and enlarging its scope, it would seem to be a proper and friendly act on the part of the signatory or contracting Powers to call the attention of the Powers generally, not merely those in dispute, to all the provisions of the convention and indeed to the terms of all the Conventions and Declarations of the Hague Conferences, and to invest somebody with the duty of acting in behalf of the signatory or contracting Powers in the performance of what is considered to be a duty. It is a detail, although a very important one, whether the diplomats accredited to The Hague, a special committee thereof, or a committee appointed by the Conference itself, or the International Bureau, should be used for this purpose. The acceptance of the principle carries with it the creation of apt agencies, and the wisdom of the nations may be trusted to devise the means if they agree upon the need.

It may well be that the preparatory committee mentioned

by the recommendation for a Third Conference, "charged by the governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an international regulation," will develop into a standing committee entrusted with international interests between the various Conferences. Especially would this be so if the committee were appointed by the Conference, instead of being selected by agreement of the Powers some time before the calling of the future Conference. It would not be an executive; it would not be a government; it would, however, as a committee, represent international interests during the periods between the Conferences.

V. An understanding upon certain fundamental principles of international law, as set forth in the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law on January 6, 1916, which are themselves based upon decisions of English courts and of the Supreme Court of the United States.

1. Every nation has the right to exist and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States. (Chinese Exclusion Case, 130 U. S., 581, 606; Regina vs. Dudley, 15 Cox's Criminal Cases, p. 624, 14 Queen's Bench Division, 273.)

2. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.

3. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the

Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them." (*Le Louis,* 2 Dodson, 210, 243–4; *The Antelope,* 10 Wheaton, 66, 122.)

4. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons, whether native or foreign, found therein. (*The Exchange,* 7 Cranch, 116, 136–7.)

5. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe. (United States *vs.* Arjona, 120 U. S., 479, 487.)

6. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations, and applicable as such to all questions between and among the members of the society of nations involving its principles. (Barbuit's case, Cases tempore Talbot, p. 281; Triquet *vs.* Bath, 3 Burrow, 1478; Heathfield *vs.* Chilton, 4 Burrow, 2015; The *Paquete Habana,* 175 U. S., 677, 700.)

VI. The creation of a permanent international council of conciliation to consider, to discuss, and to report upon such questions of a non-justiciable character as may be submitted to such council by an agreement of the Powers for this purpose.

The prototype of this council is the International Commission of Inquiry proposed by the First Hague Conference, and contained in its Convention for the Pacific Settlement of International Disputes. Its form may well be that adopted by Mr. Bryan in the various treaties for the advancement of peace which, as Secretary of State, he concluded on behalf of

the United States with some thirty foreign nations. In these it is provided that all disputes which diplomacy has failed to settle, or which have not been adjusted by existing treaties of arbitration, shall be laid before a permanent commission of some five members, which shall have a year within which to report its conclusions and during which time the contracting parties agree not to resort to arms.

The Powers might agree to establish an international commission as it is proposed to establish an international court, to be composed of a limited number of members appointed for a period of years, to which perhaps a representative of each of the countries in controversy might be added, in order that the views of the respective governments should be made known and be carefully considered by those members of the commission strangers to the dispute. In this case there would be a permanent nucleus, and the Powers at odds would not be obliged to agree upon the members of the commission, but only to appoint, each for itself, a national member. In this way the dispute could be submitted to the commission before it had become acute and had embittered the relations of the countries in question.

If an international commission of the kind specified should be considered too great a step to be taken at once, the countries might conclude agreements modeled upon those of Mr. Bryan, and as the result of experience take such action in the future as should seem possible and expedient.

The conclusions of the commission are in the nature of a recommendation to the Powers in controversy, which they are free either to accept or to reject. They are not in themselves an adjustment as in the case of diplomacy, an award as in the case of arbitration, or a judgment as in the case of a court of justice. It is the hope of the partisans of this institution that its conclusions will nevertheless form the basis of settle-

ment and that, under the pressure of enlightened public opinion, the Powers may be minded to settle their differences more or less in accord with the recommendations of the commission.

VII. The employment of good offices, mediation, and friendly composition for the settlement of disputes of a non-justiciable nature.

Good offices and mediation were raised to the dignity of an international institution by the First Hague Peace Conference, and in its Peaceful Settlement Convention the signatory or contracting Powers agreed to have "recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers," and it is specifically stated in the Convention, in order to remove doubt or uncertainty, that the offer of good offices or of mediation is not to be considered as an unfriendly act—and the Powers might also have added that it is not an act of intervention, which nations resent.

The offer of good offices is a word of advice, it is not an award or a decision. Mediation goes a step further, as the nation proposing it offers to cooperate with the parties in effecting a settlement. The agreement to ask and to offer good offices and mediation is qualified by the expression "as far as circumstances will allow." It is therefore highly desirable that frequent resort be made to good offices and mediation, in order that the nations may learn from experience that circumstances allow the offer and the acceptance of good offices and mediation without danger to either and with satisfaction to both.

Friendly composition is more than good offices or mediation, and may be less than arbitration. It is not limited to advice, and it is not restricted to cooperation; it is the settlement of a difference not necessarily upon the basis of law, but

rather according to the judgment of a high-minded and conscientious person possessing in advance the confidence of both parties to the dispute and deserving it by his adjustment of the dispute.

It may be a settlement in the nature of a compromise; it may be an adjustment according to the principles of fair dealing; it may be a bargain according to the principles of give and take. This remedy has been found useful in the past, and it can be of service in the future, where it is more to the advantage of nations to have a dispute adjusted than to have it determined in any particular way.

VIII. The principle of arbitration in the settlement of disputes of a non-justiciable nature; also of disputes of a justiciable nature which should be decided by a court of justice, but which have, through delay or mismanagement, assumed such political importance that the nations prefer to submit them to arbiters of their own choice rather than to judges of a permanent judicial tribunal.

The arbiter is not, as is the friendly composer, a free agent in the sense that he may render an award in accordance with his individual sense of right or wrong, for, as the First Hague Peace Conference said in its Pacific Settlement Convention, "international arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law." Even if law is not absolutely binding it can not be arbitrarily rejected; it must be respected, and the sentence, if it be not just in the sense that it is based upon law, it must be equitable in the sense that it is based upon the spirit of the law as distinct from the letter.

Hundreds of disputes have been settled since the Jay Treaty of 1794 between Great Britain and the United States, which brought again this method into repute and into the practice of nations. As a result of this large experience, extending over

a century, nations find it difficult to refuse arbitration when it has been proposed. But if it is a sure, it is a slow-footed, remedy, as in the absence of a treaty of arbitration one must be concluded, and, in the practice of the United States, there must be a special agreement submitted to and advised and consented to by the Senate, stating the exact nature and scope of the arbitration. The arbiters forming the temporary tribunal must likewise be chosen by the parties, and unfortunately at a time when they are least inclined to do so. It is a great and a beneficent remedy, but the difficulty of setting it in motion and the doubt that the award may be controlled by law suggest the creation of a permanent tribunal which does not need to be composed for the settlement of the case and in which law shall, as in a court of justice, control the decision.

There are many cases turning on a point of law and which could be got out of the way, to the great benefit of the cause of international peace, if they were submitted, when and as they arose, to a judicial tribunal. Unfortunately, such a tribunal has not existed in times past, and many a dispute, by delay or mismanagement, has assumed a political importance which it did not possess at the beginning. Nations may have taken a position upon it, and in consequence be unwilling to change their attitude. Again, there are matters, largely if not wholly political, or in which the political element dominates, which nations would prefer to submit to a limited commission or tribunal composed of persons in whose ability and character they have confidence and whose training seems to fit them for the disposition of the controversy in hand.

The reasons for a resort to arbitration, even although an International Court of Justice be established and ready to receive and to decide the case, have never been better stated than by Mr. Léon Bourgeois in the following passage taken from an address advocating the retention of the so-called Per-

manent Court of Arbitration and of creating alongside of it a permanent court composed of professional judges, which was proposed at the Second Hague Conference of 1907 and adopted in principle:

> If there are not at present judges at The Hague, it is because the Conference of 1899, taking into consideration the whole field open to arbitration, intended to leave to the parties the duty of choosing their judges, which choice is essential in all cases of peculiar gravity. We should not like to see the court created in 1899 lose its essentially arbitral character, and we intend to preserve this freedom in the choice of judges in all cases where no other rule is provided.
>
> In controversies of a political nature especially, we think that this will always be the real rule of arbitration, and that no nation, large or small, will consent to go before a court of arbitration unless it takes an active part in the appointment of the members composing it.
>
> But is the case the same in questions of a purely legal nature? Can the same uneasiness and distrust appear here? . . . And does not every one realize that a real court composed of real jurists may be considered as the most competent organ for deciding controversies of this character and for rendering decisions on pure questions of law?
>
> In our opinion, therefore, either the old system of 1899 or the new system of a truly permanent court may be preferred, according to the nature of the case. At all events there is no intention whatever of making the new system compulsory. The choice between the tribunal of 1899 and the court of 1907 will be optional, and the experience will show the advantages or disadvantages of the two systems.

IX. The negotiation of a convention creating a judicial union of the nations along the lines of the Universal Postal Union of 1906, to which all civilized nations and self-governing dominions are parties, pledging the good faith of the con-

tracting parties to submit their justiciable disputes—that is to say, their differences involving law or equity—to a permanent court of this union, whose decisions will bind not only the litigating nations, but also all parties to its creation.

In the Universal Postal Union, which has been mentioned as the prototype of a judicial union, all the civilized nations of the world and self-governing dominions have bound themselves to submit to arbitration their disputes concerning the interpretation of the Convention as well as their disputes arising under it, by a commission of three arbiters, of whom one is to be appointed by each of the disputants and the third in case of need by the arbiters themselves. What the nations have agreed to do *after* they can do *before* the outbreak of a dispute, for the appointment in this case is a matter of time, not of principle.

The American Institute of International Law calls especial attention to the fact that sovereignty is not necessarily involved in the formation of a judicial union, in the appointment of the judges, or in the operation of the judicial tribunal, because in the Universal Postal Union self-governing dominions are parties, which could not be the case if sovereignty were requisite, as they are not sovereign.

Should they create a judicial union, and at the time of its formation install a permanent tribunal composed of a limited number of judges, the Society of Nations would find itself possessed of a court of justice composed in advance of the disputes, ready to assume jurisdiction of them whenever they should arise, without the necessity of creating the court, appointing its members, agreeing upon the question to be litigated, and in many, if not in most, instances upon the procedure to be followed.

The prototype of this international court of justice and its procedure is the Supreme Court of the United States and its procedure, which may be thus briefly outlined:

1. The Supreme Court determines for itself the question of jurisdiction, receiving the case if it finds that States are parties and if, as presented, it involves questions of law or of equity. (Rhode Island *vs.* Massachusetts, 12 Peters, 657, decided by Mr. Justice Baldwin.)

2. If States are parties to the suit, and if it is justiciable, that is, if it involves law or equity, the plaintiff State is, upon its request, entitled to have a subpœna against the defendant State issued by the Supreme Court. (New Jersey *vs.* New York, 3 Peters, 461, decided by Mr. Chief Justice Marshall; New Jersey *vs.* New York, 5 Peters, 284, decided by Mr. Chief Justice Marshall.)

3. The plaintiff State has the right to proceed *ex parte* if the defendant State does not appear and litigate the case. (New Jersey *vs.* New York, 5 Peters, 284, decided by Mr. Chief Justice Marshall; Massachusetts *vs.* Rhode Island, 12 Peters, 755, decided by Mr. Justice Thompson.)

4. The plaintiff State has the right, in the absence of the defendant duly summoned and against which a subpœna has been issued, to proceed to judgment against the defendant State in a suit which the Supreme Court has held to be between States and to be of a justiciable nature. (New Jersey *vs.* New York, 5 Peters, 284, decided by Mr. Chief Justice Marshall.)

5. In the exercise of its jurisdiction the Supreme Court does not compel the presence of the defendant State (Massachusetts *vs.* Rhode Island, 12 Peters, 755, decided by Mr. Justice Thompson), nor does it execute by force its judgment against a defendant State (Kentucky *vs.* Dennison, 24 Howard, 66, decided by Mr. Chief Justice Taney).

The reasonableness of the judgment and the advantage of judicial settlement have thus created a public opinion as the sanction of the Supreme Court in suits between States.

6. In the exercise of its jurisdiction the Supreme Court has moulded a system based upon equity procedure between individuals in such a way as to simplify it, giving to the defendant State opportunity to present its defense as well as to the plaintiff State to present its case without delaying or blocking the course of justice by technical objections. (Rhode Island *vs.* Massachusetts, 14 Peters, 210, decided by Mr. Chief Justice Taney.)

As in the case of the Supreme Court, which has been suggested as the prototype of an international tribunal, there would be no need of a treaty of arbitration or of a special agreement in addition to the Convention creating the court and authorizing it to receive and decide justiciable disputes submitted by the contracting parties. The plaintiff State could set the court in motion upon its own initiative, without calling to its aid the members of the Union, just as each member of the American Union can file its bill in the Supreme Court without the aid, and indeed without the knowledge, of the other States of the American judicial union.

The employment of physical force either to hale a nation into court or to execute against it the judgment of the international tribunal has not been mentioned. The sheriff did not antedate the judge, nor did he come into being at the same time. He is a later creation, if not an afterthought. He is necessary in disputes between individuals; he is not necessary—at least, he is not a part of the machinery of the Supreme Court in the trial of disputes between States of the American judicial union and in the execution of its judgments against States. It may be that an international sheriff may prove to be necessary, but nations shy at physical force, especially if they understand that it is to be used against them. The presence of the sheriff armed with force, that is to say, of an international police, would make an agreement upon an international court more difficult, and if an international

sheriff should prove to be unnecessary his requirement as a prerequisite to the court would delay the constitution of this much-needed institution.

If the sheriff is needed, or if some form of compulsion is found advisable in order to procure the presence of the defendant State before the international tribunal, and to execute the judgment thereof when rendered, it is the part of wisdom to allow the experience of nations to determine when and how the force shall be created and under what circumstances and conditions it is to be applied. We should not unduly complicate a problem already sufficiently complex by insisting that the international court shall be, in its beginning, more perfect than is the Supreme Court of the United States after a century and more of successful operation.

X. The creation of an enlightened public opinion in behalf of peaceable settlement in general, and in particular in behalf of the foregoing nine propositions, in order that, if agreed to, they may be put into practice and become effective, in response to the appeal to that greatest of sanctions, "a decent respect to the opinions of mankind."

If for physical force we would substitute justice, we must create a public opinion in favor of justice, as we must create a public opinion in behalf of any and every reform which we hope to see triumph. The more difficult the problem, the greater the need that we set about it, and the sooner we begin the better it will be for the cause which we champion. There are many who advocate short-cuts to international justice, and therefore to international peace, just as there are many who advocate short-cuts to knowledge; but the pithy reply of Euclid to his royal but backward pupil is as true today as it was when uttered centuries ago, that there is no royal road to learning. To change the standard of conduct, and as a preliminary to this to change the standard of thought, is indeed a

difficult task; but if mankind is to prefer the test of justice to the test of force, we must educate mankind to a belief in justice. If we succeed, justice will prevail between nations as between men; if we fail, justice may partially prevail between men, as it largely does today, but not between and among the nations. The problem before us is therefore one of education from a false to a true and an ennobling standard. If public opinion can be educated in one country, it can be educated in other countries, and we can confidently look forward to a public opinion in all countries—universal, international, and as insistent as it is universal and international. A mere statute, we know by a sad experience, will not make men virtuous, and a mere treaty—for a treaty is an international statute—will not make the nations virtuous. We have failed in the one, and we are doomed to failure in the other attempt, for nations, composed of these very men and women, are not to be *reformed by statute any more than the men and women composing them.* Without public opinion the statute—national or international—is a dead letter; with public opinion the statute—national or international—is a living force. With public opinion all things are possible; without public opinion we may hope to do nothing. Were Archimedes living today, and if he were speaking of things international, he would declare public opinion the lever that moves the world.

In speaking of public opinion, Mr. Root has recently and impressively said:

> There is but one power on earth that can preserve the law for the protection of the poor, the weak, and the humble; there is but one power on earth that can preserve the law for the maintenance of civilization and humanity, and that is the power, the mighty power, of the public opinion of mankind.
>
> Without it your leagues to enforce peace, your societies for a world's court, your peace conventions, your peace

endowments are all powerless, because no force moves in this world until it ultimately has a public opinion behind it.

The thing that men fear more than they do the sheriff or the policeman or the State's prison is the condemnation of the community in which they live.

The thing that among nations is the most potent force is the universal condemnation of mankind. And even during this terrible struggle we have seen the nations appealing from day to day, appealing by speech and by pen and by press, for the favorable judgment of mankind, the public opinion of the world. That establishes standards of conduct.

May we not, on the eve of an International Conference, say with Washington on the eve of the International Conference of 1787: "Let us raise a standard to which the wise and the honest can repair. The event is in the hands of God."

JAMES BROWN SCOTT.

Appendix

CONSTITUTION OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

ARTICLE I. *Name*

An association is founded to be known as the *American Institute of International Law.*

ARTICLE II. *Object*

The American Institute of International Law is an unofficial scientific association.

It proposes:

1. To give precision to the general principles of international law as they now exist, or to formulate new ones, in conformity with the solidarity which unites the members of the society of civilized nations, in order to strengthen these bonds and, especially, the bonds between the American peoples;

2. To study questions of international law, particularly questions of an American character, and to endeavor to solve them, either in conformity with generally accepted principles, or by extending and developing them, or by creating new principles adapted to the special needs of the American Continent;

3. To discover a method of codifying the general or special principles of international law, and to elaborate projects of codification on matters which lend themselves thereto;

4. To aid in bringing about the triumph of the principles of justice and of humanity which should govern the relations between peoples, considered as nations, through more exten-

sive instruction in international law, particularly in American universities, through lectures and addresses, as well as through publications and all other means;

5. To organize the study of international law along truly scientific and practical lines in a way that meets the needs of modern life, and taking into account the problems of our hemisphere and American doctrines;

6. To contribute, within the limits of its competence and the means at its disposal, toward the maintenance of peace, or toward the observance of the laws of war and the mitigation of the evils thereof;

7. To increase the sentiment of fraternity among the Republics of the American Continent, so as to strengthen friendship and mutual confidence among the citizens of the countries of the New World.

Article III. *Membership*

The American Institute of International Law is composed of committees or delegates of the national societies of international law established in the different American Republics, which are affiliated therewith and of which it is the permanent representative.

It comprises:

1. Charter members;
2. Titular members;
3. Ex officio members;
4. Corresponding members.

The charter members are those who accepted this designation by signing, in 1912, the draft which has now become the present Constitution.

The titular members, chosen exclusively from among the publicists of the different Republics of the American Conti-

nent, are elected by the Institute, in conformity with the next article. No Republic may have more than five such members at one and the same time.

If the secretary general of the national society of international law in any one of the American Republics is not personally a member of the Institute, he becomes of right a member ex officio, that is to say, by virtue of and for the term of his office. Ex officio members have, as such, the same rights as titular members.

Jurists of non-American nationality, who, through their writings or their activity, shall have contributed to the progress of international law, may be elected corresponding members.

Corresponding members are invited to attend all the sessions of the Institute, with the same rights and privileges as American members. They have not, however, the right to vote either on administrative or scientific questions.

They are called upon to give their opinion on questions submitted to the consideration of the Institute, and they are active collaborators thereof.

They are exempt from the entrance fee and annual dues.

No one State can have more than three such members.

Article IV. *National Societies*

The national societies organized in each American Republic for the study and popularization of international law, whose members are jurists versed in international law, may affiliate with the American Institute. The members of these societies are entitled to attend the sessions of the Institute, but they may not take part in its deliberations nor may they vote.

The affiliated national societies propose duly qualified persons from among their nationals, for election as titular members by the Institute.

The members of the national societies, who are members of the Institute, constitute, in their country, a governing committee of the said society, which committee is the intellectual bond between the national society and the Institute.

The committee communicates, either directly, or through the secretary general of the national society, with the secretary general of the Institute, and sends him all the transactions and projects of the said society or informs him of the progress that has been made upon them.

The secretary general of the Institute transmits these transactions and projects in full, in part, or a synopsis thereof to the different national societies.

Article V. *Officers*

The officers of the Institute are an honorary president, a president, a secretary general, and a treasurer.

Before the close of each session there is an election of an honorary president and a president, who remain in office until the election of their successors at the following session.

The application of the foregoing second paragraph is provisionally suspended until the Institute shall have decided otherwise.

In the elections individual ballots are cast, and only the members present are permitted to vote. Nevertheless, absent members are allowed to send their votes in writing, in sealed envelopes. Candidates must receive a majority of the votes of the members present, as well as a majority of all the votes validly cast, in order to be elected.

Article VI. *Executive Council*

An *Executive Council* is the governing body of the Institute. It meets at Washington, the seat of the Institute.

It is composed of the president, the secretary general, and the treasurer, who are members ex officio, and of two other members elected at the beginning of each session. They are eligible for re-election.

It has the right to increase its membership and itself elects additional members, if it deems it necessary.

Article VII. *Secretary General*

The secretary general is elected by the Institute for three sessions. He is eligible for re-election.

He has in his charge the drafting of the minutes of each meeting, all the publications of the Institute, its routine work, its correspondence, and the execution of its decisions, unless the Institute provides otherwise. He is keeper of its seal and of its archives. At the beginning of each session he presents a summary of the work of the preceding session.

Article VIII. *Assistant Secretaries*

On the proposal of the secretary general, the Institute may appoint one or more assistant secretaries, to aid him in the performance of his duties or to represent him in his absence.

Article IX. *Treasurer*

The treasurer is elected for three sessions. He is eligible for re-election.

He has in his charge the financial affairs of the Institute, under the control of the Executive Council. He presents a detailed report at each session.

Two members are designated at the first meeting as auditors, and present, during the session, a report on the result of their examination of the treasurer's accounts.

ARTICLE X. *Reporters*

The Executive Council submits questions for examination and study to the affiliated national societies, or appoints reporters from among its members, or organizes committees for the preparatory study of questions that are to be submitted to the deliberations of the Institute.

In urgent cases, the secretary general himself prepares the reports.

ARTICLE XI. *Sessions*

There shall be at least one session of the Institute every two years; but the Executive Council may, during this interval, call an extra session of the Institute.

At each session the Instifute designates the place and the time of the following session. It may leave this designation to the Executive Council.

ARTICLE XII. *Languages*

French, the language of the *Institut de droit international* and of the Peace Conferences, is likewise the language of the Institute.

Nevertheless the use of Spanish, Portuguese, and English, as national languages, is permitted as of right.

Every official document that is to be published is translated into the language or languages selected by the officers.

ARTICLE XIII. *Publication of Proceedings*

After each session, the Institute publishes an account of its proceedings.

ARTICLE XIV. *Dues and Funds*

The expenses of the Institute are covered:

1. By the dues of its members, as well as by an entrance fee.

The dues are, unless the by-laws provide to the contrary, an entrance fee of ten dollars and annual dues of five dollars. The dues are payable from and including the year of election. They entitle the member to all the publications of the Institute. An unjustifiable delay of more than three years in the payment of dues may be considered as equivalent to a resignation.

2. By foundations and other gifts.

It is proposed that a fund be gradually formed, the income from which shall be devoted to the expenses of the sessions, of the publications, of the secretariat, and of other routine matters.

Article XV. *Amendments*

The present constitution may be revised or amended, in whole or in part, at a regular session, on the request of a majority of the members present and voting.

BY-LAWS OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

PART I

Members

ARTICLE I

The titular members of the Institute are elected by it from the list of names presented by the affiliated national society.

ARTICLE II

Where no offiliated national society exists or where the existing society neglects to present candidates, the Institute provides for nominations or vacancies as it sees fit.

ARTICLE III

Corresponding members are elected by the Institute on the proposal of the Executive Council, at the meeting devoted to the election of titular members.

PART II

Preliminary Work between Sessions

ARTICLE IV

By article X of the Constitution the Executive Council presents the questions for study, either by laying them before the national societies, or by designating two reporters, or one reporter and a committee of study for each question.

In the former case, the subject, with or without a questionnaire, is submitted to each national society.

If two reporters are appointed, each of them prepares a memorandum, after which one of them or a third reporter designated by the Executive Council prepares a report on the basis of and with the assistance of the memoranda presented.

If a reporter and a committee of study are designated, the reporter must get into communication with the members of the committee before the 31st of December of the year of his appointment, and submit his ideas to them and learn their views.

Every member, who signifies his desire to that effect, has the right to be a member of such of the committees of study as he shall indicate to the secretary general.

Article V

The national societies and the reporters must transmit their studies or reports to the secretary general in ample time for their publication and distribution before the session at which they are to be discussed.

The secretary general does not provide for the printing or distribution of other reports or documents prepared by the reporters or by members of committees or of the Institute. Such works are published only in exceptional cases and by virtue of an express decision on the part of the Institute or the Executive Council.

PART III

Sessions

Article VI

There may be no more than one session each year. The interval between two sessions must not exceed two years.

At each session the Institute designates the place and time of the next session. This designation may be left to the Execu-

tive Council (Constitution, Article XI). In this case, the secretary general informs the national societies affiliated with the Institute, at least four months in advance, of the place and date determined upon.

Article VII

The program of the session is drawn up by the Executive Council, and the secretary general brings it to the attention of the national societies as soon as possible.

The program must be accompanied by the summary of the progress made on the preparatory work, as well as by all other information that may facilitate the labors of the members taking part in the session.

Article VIII

Members who desire to propose new questions for study are invited to lay them before the Executive Council at the beginning of the session. This invitation must be extended by the president at the opening of the sessions.

Article IX

The president, after consultation with the Executive Council and the reporters, determines the order in which the subjects should be treated; but the program is in all cases under the control of the Assembly itself.

PART IV

Meetings

Article X

The meetings are devoted to scientific work.

The titular members and the corresponding members take

part in them. The former have the right to vote; the latter have the right merely to take part in the discussions.

The meetings are not public. The Executive Council may, however, permit the attendance of the local authorities and press, as well as of persons who request to be admitted.

Article XI

Unless otherwise resolved by a special decision of the Executive Council, the president delivers an address immediately after the opening of the first meeting.

The secretary general presents a summary of the work of the last session and makes known the names of the assistant secretaries or editors whom he has appointed to aid him in drawing up the minutes of the session.

The assistant secretaries or editors hold office only during the session.

Article XII

The treasurer is then requested to present his accounts to the Institute, and two auditors are thereupon elected to examine the accounts of the treasurer. The auditors present their report in the course of the session (Constitution, Art. IX).

Article XIII

Each meeting is opened by the reading of the minutes of the preceding meeting.

Separate minutes are drawn up for each meeting, even when there are more than one on the same day; but the minutes of the morning meeting are read only at the opening of the next day's meeting.

The members present approve or revise the minutes. Revision can be requested only in the matter of wording, of errors, or of omissions. A decision can not be changed in the minutes.

The minutes of the last meeting of a session are approved by the president.

Article XIV

If the Executive Council deems it advisable to consider a matter as urgent, it may propose the immediate discussion thereof, and, if the majority of the members present agree, the matter may be put to vote in the course of this session; otherwise the proposition is of right postponed until the following session.

Article XV

Committees may be appointed during a meeting for the examination of certain questions. These committees may, in turn, appoint sub-committees.

Article XVI

The propositions of the reporters and of the committees form the basis of the deliberations in the meetings.

The members of committees have the right to complete and develop their individual opinions.

Article XVII

The discussion is then opened. It takes place in the languages indicated in Article XII of the Constitution.

At the request of the members, the discussion may be summed up in French.

Article XVIII

No one may speak without having been previously recognized by the president.

The latter notes the names of the members who request the floor and recognizes them in the order of their requests.

The reporters, however, when the question on which they have made a report is under discussion, are not subject to the rule of speaking in turn. The same is true of the president of the committee.

Article XIX

The reading of an address is forbidden, unless specially authorized by the president.

Article XX

If a speaker digresses too far from the subject under consideration, the president calls his attention to the fact and requests him to speak to the question.

Article XXI

All propositions and all amendments are submitted, in writing, to the president.

Article XXII

If a point of order is raised during a deliberation, the discussion of the main question is suspended until the assembly passes upon the point of order.

Article XXIII

The closing of the discussion may be proposed. The discussion may not, however, be declared closed, unless a two-thirds majority of the assembly so votes.

If no one demands the floor or if it has been resolved to close the discussion, the president declares the discussion closed. Thereafter no one may be given the floor, except, in special cases, the reporter or the president of the committee.

Article XXIV

Before proceeding to a vote, the president submits to the assembly the order in which the questions will be voted upon.

If there are objections to the order, the assembly passes upon them at once.

Article XXV

Amendments to amendments are put to vote before amendments, and the latter before the main question. Proposals purely and simply to reject the question are not considered amendments.

Where there are more than two alternate main propositions, they are all put to vote, one after the other, and every member may vote for one of them. When a vote has thus been taken on all the propositions, if none of them has obtained a majority, the members decide, by another ballot, which of the two propositions receiving the least number of votes must be eliminated. The remaining propositions are then voted upon in the same manner until only one is left, upon which a definitive vote may be taken.

Article XXVI

The adoption of an amendment to an amendment does not bind a member to vote for the amendment itself; neither does the adoption of an amendment obligate a member to vote in favor of the main proposition.

Article XXVII

When a proposition is capable of being divided, any member may request a vote by division.

Article XXVIII

When the proposition under consideration is drawn up in several articles, the proposition as a whole is first subjected to general discussion.

After such discussion and the vote on its articles, the proposition as a whole is put to vote. Such vote may be postponed until a subsequent meeting.

Article XXIX

The voting is done by raising the hand.

No one is bound to take part in a vote. If some of the members present abstain, the question is decided by the majority of those voting.

In case of a tie, the proposition is considered defeated.

Article XXX

The vote may be taken by roll-call, if five members so request. There is always occasion for a roll-call on a scientific proposition as a whole.

The minutes mention the names of the members voting for or against and the names of those who abstain.

Article XXXI

The Institute may decide that a second deliberation should take place, either in the course of the session, or during the following session, or that its decisions be referred to a drafting committee to be designated by itself or by the Executive Council.

OFFICERS AND MEMBERS OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

Officers

Elihu Root, *Honorary President*
James Brown Scott, *President*
Alejandro Alvarez, *Secretary General*
Luis Anderson, *Treasurer*

Executive Council

Elihu Root
James Brown Scott
Alejandro Alvarez
Luis Anderson
Antonio Sanchez de Bustamante
Joaquin D. Casasus*

Permanent Committee for the Study of Questions Relating to Neutrality

The Executive Council

Charter Members

Argentine Republic: Luis M. Drago
Bolivia: Alberto Gutierrez
Brazil: Ruy Barbosa

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*Deceased.

Chile: ALEJANDRO ALVAREZ
Colombia: ANTONIO JOSÉ URIBE
Costa Rica: LUIS ANDERSON
Cuba: ANTONIO SANCHEZ DE BUSTAMANTE
Dominican Republic: ANDRÉS J. MONTOLÍO
Ecuador: RAFAEL ARIZAGA
Guatemala: ANTONIO BATRES JÁUREGUI
Haiti: J. N. LÉGER
Honduras: ALBERTO MEMBREÑO
Mexico: JOAQUIN D. CASASUS*
Nicaragua: SALVADOR CASTRILLO
Panama: FEDERICO BOYD
Paraguay: MANUEL GONDRA
Peru: RAMON RIBEYRO*
Salvador: RAFAEL S. LOPEZ*
United States of America: JAMES BROWN SCOTT
Uruguay: CARLOS M. DE PENA
Venezuela: JOSÉ GIL FORTOUL

TITULAR MEMBERS

Argentine Republic

EDUARDO BIDAU
CARLOS OCTAVIO BUNGE
JOAQUIN V. GONZALEZ
EDUARDO SARMIENTO LASPIUR

Bolivia

DANIEL SANCHEZ BUSTAMANTE
ALBERTO DIEZ DE MEDINA
CLAUDIO PINILLA
VICTOR E. SANJÍNES

---

*Deceased.

Brazil

CLOVIS BEVILAQUA
LAURO MÜLLER
RODRIGO OCTAVIO
MANOEL CICERO PERERGINO DA SILVA
EPITACIO PESSOA

Chile

LUIS BARROS BORGOÑO
ANTONIO HUNEEUS
EDUARDO SUAREZ MUJICA
ELIODORO YAÑES

Colombia

NICOLAS ESGUERRA
FRANCISCO JOSÉ URRUTIA
ADOLFO URUETA
JOSÉ MARIA GONZALEZ VALENCIA

Costa Rica

RICARDO GIMENES
LEONIDAS PACHECO
MANUEL CASTRO QUESADA
C. GONZALEZ VIQUES

Cuba

PABLO DESVERNINE
OCTAVIO GIBERGA
FERNANDO SANCHEZ DE FUENTES
RAFAEL MONTORO

Dominican Republic

FEDERICO HENRIQUES CARVAJAL
MANUEL J. TRONCOSO DE LA CONCHA
MANUEL ARTURO MACHADO
ADOLFO ALEJANDRO NOUEL

Ecuador

ALEJANDRO CARDENAS
GONZALO S. CÓRDOVA
VICTOR MANUEL PEÑAHERRERA
JOSÉ LUIS TAMAYO

Guatemala

MARIANO CRUZ
JOSÉ MATOS
ALBERTO MENCOS
CARLOS SALAZAR

Haiti

LOUIS BORNO
EDMOND HÉRAUX
PIERRE HUDICOURT
SOLON MÉNOS

Honduras

FAUSTO DAVILA
ALBERTO UCLÉS
RICARDO DE J. URRUTIA
MARIANO VÁSQUEZ

Mexico

FRANCISCO L. DE LA BARRA
MANUEL CALERO
VICTOR MANUEL CASTILLO
PEDRO LASCURAIN

Nicaragua

MODESTO BARRIOS
ALEJANDRO CESAR
PEDRO GONZALEZ
CARLOS CUADRA PASOS
MAXIMO H. ZEPEDA

Panama

RICARDO J. ALFARO
HARMODIO ARIAS
EUSEBIO A. MORALES
BELISARIO PORRAS
RAMON M. VALDES

Paraguay

EUSEBIO AYALA
CECILIO BAEZ
ANTOLIN IRALA
FULGENCIO R. MORENO

Peru

ISAAC ALZAMORA
VICTOR M. MAURTUA
SOLON POLO
MANUEL V. VILLARÁN

Salvador

SALVADOR GALLEGOS
ALONSO REYES GUERRA
VICTOR JEREZ
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ELIHU ROOT
LEO S. ROWE

Uruguay

DANIEL GARCIA ACEVEDO
MANUEL ARBELAIZ
JUAN ANTONIO BUERO
ADOLFO BERRO GARCIA
JUAN ZORILLA DE SAN MARTIN

Venezuela

SIMON BARCELÓ
ARMINIO BORJAS
JESUS ROJAS FERNANDEZ
F. ARROYO PAREJO

COMMENDATION OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW BY OFFICIAL ASSEMBLIES OF A LEGAL, POLITICAL AND SCIENTIFIC NATURE, COMPOSED OF REPRESENTATIVES OF ALL THE AMERICAN REPUBLICS.

The Third Committee of the Commission of American Jurists, which met at Rio de Janeiro to consider the codification of international law, at its meeting of July 16, 1912, adopted a resolution:

> Commending the initiative taken to found an American Institute of International Law, as the Committee considers an institution of this kind of great usefulness to assist in the work of codification that the statesmen of the New World have in view.

The Governing Board of the Pan American Union, at its meeting held in the City of Washington on December 1, 1915, unanimously adopted the following resolution:

> Whereas the official inauguration of the American Institute of International Law, founded in Washington October 12, 1912, is soon to take place under the auspices of the Second Pan American Scientific Congress, and
>
> Whereas said Institute, consisting of representatives of every one of the American Republics, recommended by the International Law Associations of their respective countries, will result in strengthening, through the active cooperation of jurists and thinkers of the whole continent, the bonds of friendship and union now existing between these Republics, and will contribute to the development of a common sentiment of international justice among them,
>
> The Governing Board of the Pan American Union
>
> *Resolves* to tender to the founders and members of the American Institute of International Law a vote of commendation and encouragement for the foundation of said organization, which represents a step of the highest importance in the moral advancement of the continent and in the strengthening of the sentiments of friendship and harmony among the Republics.

The Second Pan American Scientific Congress, which met at Washington December 27, 1915–January 8, 1916, adopted the following resolution, which is included in its Final Act:

> The Second Pan American Scientific Congress extends to the American Institute of International Law a cordial welcome into the circles of scientific organizations of Pan America, and records a sincere wish for its successful career and the achievement of the highest aims of its important labors.